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ACCOUNTS AND PAPERS:

THIRTY-EIGHT VOLUMES.

— *(4.)* —

ARMY.

JAMAICA (CONDUCT OF MILITARY OFFICERS); JAMAICA (COURTS MARTIAL); SIMLA COURT MARTIAL.

Session

5 *February* —— 21 *August* 1867.

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ACCOUNTS AND PAPERS:

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THIRTY-EIGHT VOLUMES:—CONTENTS OF THE

FOURTH VOLUME.

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ACCOUNTS AND PAPERS;

1857.

THIRTY-EIGHT VOLUMES:—CONTENTS OF THE

FOURTH VOLUME.

JAMAICA.

RETURN to an Address of the Honourable The House of Commons, dated 3 August 1866;—*for*,

"COPY or EXTRACTS of CORRESPONDENCE between the Horse Guards and General *O'Connor* on the CONDUCT of MILITARY OFFICERS during the recent deplorable OCCURRENCES in *Jamaica*."

War Office,
11 February 1867.

J. PEEL.

(*Mr. Charles Gilpin.*)

Ordered, by The House of Commons, *to be Printed*,
12 *February* 1867.

ABSTRACT OF DOCUMENTS.

No.	Number of Enclosure.	DATE.	FROM.	TO.	SUBJECT.	WHERE PRINTED.
1	–	24 Oct. 1865	Major General O'Connor	Military Secretary - -	Outbreak among black population at Morant Bay; measures taken to suppress the insurrection, and to defend the island; conduct of officers and troops.	In this Return - - - - - - p. 3
	1	14 Oct. ..	Brigadier General Nelson	Major General O'Connor	Detailing measures taken at Port Morant, &c. - - - - - - - -	Encl. 52, in No. 1, p. 29, Pt. I. Disturbances in Jamaica.
	2	15 Oct. ,,	- - Ditto - - -	- - ditto - - -	In continuation of former letter; arrangements at Port Antonio, &c. - - -	Encl. 53, in No. 1, p. 30 - ditto - ditto.
	3	16 Oct. ,,	- - Ditto - - -	- - ditto - - -	Requesting arms for the Maroons; as to force under Captain Field; proceedings of courts-martial, &c.	Encl. 59, in No. 1, p. 35 - ditto - ditto.
	4	17 Oct. ,,	- - Ditto - - -	- - ditto - - -	Reporting Captain Hole's proceedings at Manchioneal - - - - -	Encl. 61, in No. 1, p. 36 - ditto - ditto.
	5	19,20 Oct. ,,	- - Ditto - - -	- - ditto - - -	Sending despatches from Captain Hole and Lieutenant Oxley; as to prisoners, &c. &c.	In this Return - - - - - - p. 10 & 11
	Sub.(A)	17 Oct. ,,	P. Bogle and others -	Mr. Graham and others -	A call to arms - - - - - - - - - - - - -	Encl. 34, in No. 1, p. 23, Pt. I. Disturbances in Jamaica.
	,, (B)	19 Oct. ,,	Captain Hole - - -	Brigadier General Nelson	Reporting proceedings at Manchioneal - - - - - - - - -	Encl. 64, in No. 1, p. 38 - ditto - ditto.
	,, (C)	19 Oct. ,,	Lieutenant Oxley, R.N. -	- - Ditto - - -	Reporting proceedings at Stony Gut - - - - - - - - -	Encl. 68, in No. 1, p. 40 - ditto - ditto.
	6	22 Oct. ,,	Brigadier General Nelson	Major General O'Connor	Reporting proceedings of detachments under Lieutenants Adcock and Oxley -	In this Return - - - - - - - p. 11
	Sub.(D)	21 Oct. ,,	Lieutenant Oxley - -	Brigadier General Nelson	Reporting arrival at Easington - - - - - - - - - -	In this Return - - - - - - - p. 12
	7	17 Oct. ,,	Colonel Hobbs - -	Major General O'Connor	Reporting expedition to Somerset - - - - - - - - -	In this Return - - - - - - - p. 13
	8	12 Oct. ,,	Captain De Horsey, R.N.	- - ditto - - -	Suggesting that reinforcements be sent to Morant Bay - - - - -	In this Return - - - - - - - p. 13
	Sub.(E)	12 Oct. ,,	- - Ditto - - -	Governor Eyre - -	Reporting disturbance at Morant Bay; requesting reinforcements - - -	Encl. 20, in No. 1, p. 17, Pt. I. Disturbances in Jamaica.
	9	18 Oct. ,,	Major General O'Connor	Brigadier General Nelson	Approving the conduct of officers concerned, except Colonel Hobbs - - -	In this Return - - - - - - - p. 14
	10	19 Oct. ,,	Colonel Hobbs - -	Major General O'Connor	Reporting expedition to Stony Gut, &c.; requesting that G. W. Gordon may be sent to him.	Encl. 69, in No. 1, p. 40, Pt. I. Disturbances in Jamaica.
	11	16 Oct. ,,	Captain Luke - -	Brigadier General Nelson	Reporting operations at Port Morant, Bath, and Port Antonio - - - -	Encl. 60, in No. 1, p. 35 - ditto - ditto.
	12	- -	- - - - - -	- - - - -	Return of civilian prisoners, confined at Up Park Camp, from 14 to 23 October 1865.	In this Return - - - - - - - p. 15
	13	- -	- - - - - -	- - - - -	Approximate state of the troops in Jamaica, 23 October 1865 - - - -	In this Return - - - - - - - p. 17
	14	17 Oct. 1865	Captain Hole - -	Brigadier General Nelson	Reporting proceedings at Manchioneal, &c. - - - - - - - -	Encl. 62, in No. 1, p. 37, Pt. I. Disturbances in Jamaica.
	15	21 Oct. ,,	Governor Eyre - -	Major General O'Connor	On the "Urgent" being sent to Barbados - - - - - - - -	In this Return - - - - - - - p. 17
	16	21 Oct. ,,	Major General O'Connor	Governor Eyre - -	On the "Urgent" being sent to Barbados - - - - - - - - -	In this Return - - - - - - - p. 18
2	–	21 Nov. ,,	Military Secretary - -	Major General O'Connor	Acknowledging the receipt of No. 1 - - - - - - - - - -	In this Return - - - - - - p. 19
3	–	21 Nov. ,,	Major General O'Connor	Military Secretary - -	Expressing approval of the conduct of Brigadier General Nelson, and other officers.	In this Return - - - - - - p. 19
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	3	9 Nov. ,,	Colonel Hobbs - -	Major General O'Connor	Denouncing Mr. Alvarenga as a rebel; as to sale of captured stock - -	In this Return - - - - - - p.
	4	13 Nov. ,,	Major General O'Connor	Colonel Hobbs - -	Disapproving his proceedings - - - - - - - - - -	In this Return - - - - - - p. 25
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	7	21 Nov. ,,	Deputy Adjutant General	Colonel Hobbs - -	Further on the same subject - - - - - - - - - -	In this Return - - - - - - p. 28

COPY or EXTRACTS of CORRESPONDENCE between the Horse Guards and General *O'Connor* on the CONDUCT of MILITARY OFFICERS during the recent deplorable OCCURRENCES in *Jamaica*.

— No. 1. —

Major General *O'Connor* to the Military Secretary.

(Jamaica Command.)

Sir, Head Quarter House, 24 October 1865.

IT is with more than ordinary regret I have the honour to report, for the information of His Royal Highness the Field Marshal Commanding in Chief, that a most barbarous and cold-blooded massacre of several influential Europeans and native inhabitants was perpetrated by insurgent rebels at Morant Bay, on the 11th instant; St. Thomas'-in-the-East, Portland, St. George, Port Royal, and St. Andrews, being now the scene of active field operations, and the county of Surrey under martial law.

I made my inspection of the left wing, 1st West India Regiment, commanded by Major Anton, at Up-Park Camp, on the morning of the 11th instant, and about 11·30 received from Governor Eyre a requisition to detail 100 men to Morant Bay, as a serious disturbance had occurred there.

I caused the necessary instructions to be issued to Major Anton, and in less than an hour Captain Ross, with his company of one hundred (100) men, 1st West India Regiment, paraded for my inspection, victualled, and ready for active service.

H. M. S. "Wolverine," coming up from Port Royal to Kingston during the afternoon, the detachment went on board under the direction of Lieutenant Colonel Nelson, Deputy Adjutant General.

Lieutenant Jones of the Royal Artillery, with a field piece, embarked at Port Royal. The "Wolverine" started next morning, the 12th instant, for Morant Bay.

On the morning of the 12th instant, I went to Port Royal in the gunboat "Onyx," to inspect the Royal Artillery and detachment 1st West India Regiment, and having completed the duty, was returning to Kingston in the "Onyx," at 3 o'clock, when Lieutenant Adcock, 2nd Battalion 6th Regiment, intercepted me in the Quartermaster General's boat, and reported that a fearful massacre of white and native inhabitants had taken place the previous day, the 11th instant, at Morant Bay.

The Honourable Baron Von Kettleholdt, custos of the parish, and member of the Council, several other magistrates, the Rev. Mr. Herschell, two sons of the Rev. Mr. Cook, Mr. Price, J. P., Captain Hitchins, with twenty (20) volunteers, were among the number butchered in a most brutal manner. I instantly had the steamer's head put about, consulted with the senior naval officer on board the "Aboukir," instructed him to send the "Onyx" forthwith. Captain Luke and his company, 1st West India Regiment; Lieutenant Nash, Royal Artillery, the only subaltern left at Port Royal, and a field piece, embarked to proceed with as little delay as possible to Morant Bay.

Cheerfully and promptly were my orders carried into effect; Lieutenant Brand, R.N., in command of the "Onyx," rapidly had his vessel coaled and made ready for sea; Captain Luke and his company of 100 men, 1st West India Regiment, in light marching order; Lieutenant Nash, R.A., and a field piece on board. In three hours the "Onyx" was off to Morant Bay, where the reinforcements were landed early next morning, the 13th instant.

Returning to Kingston in the "Aboukir's" gig, I met Captain Smith, R.N., *en route* to Port Royal, who reported to me that the custos of Kingston, the Honourable Dr. Bowerbank, the magistrates, leading merchants, and inhabitants, were all collected on the Ordnance Wharf most anxiously awaiting my arrival; and on landing, a body of magistrates and gentlemen, naturally much alarmed at the fearful state of affairs, met me; the custos read a letter from Mr. Georges, a gentleman of high standing and influence in Jamaica, stating he was the only European left at Morant Bay, severely wounded with three balls in his leg, after a providential escape from the rebels.

I, in a measure, calmed the general anxiety by telling the public prompt means were already adopted, and the "Onyx" despatched with reinforcements for Morant Bay. In the course of the evening, I received from Governor Eyre a despatch, the chief purport of which had been already performed.

At about 8 o'clock the same evening, Governor Eyre came to Head-Quarter House from his mountain residence, held a consultation with his executive committee, the custos, and other civil authorities; the discussion of several plans proposed continued till past midnight, when his Excellency proceeded to Spanish Town, appointing the next morning for a general meeting at Head Quarter House, which accordingly took place at 8 a.m.

It is needless to enter into the details of the variety of suggestions offered, contradictory opinions, discussions; at last it was settled that martial law was to be proclaimed in the county of Surrey, Kingston excepted; and the Governor deciding to go in person, I selected Lieutenant Colonel Nelson, Deputy Adjutant General, to accompany his Excellency, and take command of the troops in the field.

Fortunate indeed for this Colony and the success of the military operations, my placing Colonel Nelson in command, cool, calm, decided, maintaining his own position without trenching upon the rights of others, of long and well-tried experience in the Candahar and Affghanistan campaigns, under Sir W. Nott, and Sir Charles Napier, and aide-de-camp to Sir Thos. Valliant, he has conducted with ability and success a small force scattered into detachments, in a most difficult and dangerous country filled by a savage and crafty enemy, and carried out important operations in the field with vigour and promptitude that has struck terror into the insurgents, checked in the bud, if not crushed, at least so far as the eastern portion of Jamaica is concerned, what might have proved a rebellion, involving the sacrifice of a large number of the white and respectable coloured inhabitants, spreading desolation through, if not totally destroying, one, in former days, of the finest and most flourishing Colonies possessed by the British Government.

Meanwhile, I ordered two companies of the 2nd Battalion 6th Royal Regiment, from Newcastle to Up-Park Camp as reserve, sending with his Excellency the Governor, who proceeded in the hired French steamer "Caravelle," Ensign Kelly, 4th West India Regiment, and fifty (50) men, 1st West India Regiment, and subsequently Captain Hole, Ensign Lewis, and sixty-six (66) rank and file of the 2nd Battalion 6th Regiment, in the "Wolverine," in accordance with the Governor's requisition.

In what way the operations were conducted in the field, the various events of the campaign for the last 12 days, the measures taken, and the successful result of Brigadier General Nelson's prudence, promptitude and decision, I refer to that officer's Despatches from No. 1 to No. 6, as per margin.

14 October 1865.
15 " "
16 " "
17 " "
19 " "
22 " "

The terse, graphic, and clear details given in these documents afford the fullest and most satisfactory sketch from time to time of the rebellion, and it would detract very much from their interest and effect, my attempting to report or enlarge upon Brigadier General Nelson's succinct reports.

But our operations against the rebels were not confined to a certain portion of the disturbed district; Captain Field and fifty (50) men of the 2nd Battalion 6th Regiment, promptly dispatched from Newcastle by Colonel Hobbs, commanding that corps, to Mahogany Vale on the 12th instant, where a Major General Jackson, a retired officer and a magistrate, resided, and reported that the rebels were in force in the adjacent mountains, occupying a stronghold, called Stony Gut, an almost impregnable ravine extending for upwards of three miles.

Colonel Hobbs having reinforced Captain Field's detachment with highly creditable zeal, applied for my permission to take the field, and, this granted, promptly

promptly left New Castle at daylight, the 13th instant, although under the most inclement weather, reached Mahogany Vale, assumed command of the division, and has since continued to be actively and energetically engaged in operations against the rebels.

Colonel Hobbs has had many and great difficulties to contend with from the mountainous nature of the country roads, or rather almost impassable paths, his line of operations intersected by numerous rivers, swollen from incessant rains, rendering fording them most dangerous and harassing to officers and men, still one and all exhibit enduring patience and steady perseverance, cheerfully obeying and following their commanding officer; not a solitary case of intoxication or one man sick, affording the most practical proof of the discipline and efficiency of the 2nd Battalion, 6th Royal Regiment, a remark applicable to every officer and man of this gallant corps serving under my command.

To aid Brigadier General Nelson's plan for hemming the rebels within an equilateral triangle, and prevent their extending operations to other parishes and parts of the island, where no doubt a large mass of disaffected persons, many educated men, were ready on the first success of the insurgents to burst into revolt, for I fully coincide with the view taken by Brigadier General Nelson in a letter to me, "whether the thing is put down just for the present there is matter, doubtless, slumbering, which fanned, would spring into a blaze," I sent Captain Harmond with forty-six (46) men of the 2nd Battalion, 6th Regiment, across to Buff Bay, in the neighbourhood of which some of the most valuable sugar estates are situated. This movement gave confidence to the planters, checked any disposition to revolt, and formed a chain from that side of the island to Kingston, completing the triangle.

Nor has my situation at head quarters proved a sinecure. The Honourables Messrs. Westmoreland and Hosack, two members of his Excellency's Executive Committee, the Honourable Dr. Bowerbank, custos of the district, the Clerk of Council, with a host of influential gentlemen, magistrates, planters, great and small landholders, merchants, and traders, resort to me with reports, alarms, applications for arms, assistance, defence, and advice, I may truly say from daylight to midnight; nor can I take my meals free from constant interruption. Each individual considers his own house or property of paramount importance. Every one entreats that I would send soldiers, arms, ammunition, any protection of their peculiar place. An universal panic prevailed; gentlemen fled with their families from their mountain residences, many not more than a mile from Up Park Camp, to Kingston. Report after report was rife of an insurrectionary spirit prevailing among the lower orders of Kingston, plans for the general massacre of the Europeans and respectable inhabitants, to take place during Divine Service on Sunday the 15th instant. So that when I went to the Cathedral to prove to the public that I had no faith in idle rumours, I found only about a dozen persons of what is generally a densely crowded congregation. Then the city was to be fired on Wednesday the 18th instant; in brief, it is impossible to enumerate the constant alarms or describe how universally terror prevailed.

The two members of the Executive Committee, the Custos and the Clerk of the Council, were in continued communication with me, consulting my opinion on every document, subject, or point of major or minor import, not only as general commanding the troops, but, having filled in former days the situation of Governor, they were pleased to place implicit confidence in my views and opinions.

The military force of New Castle and Up-Park Camp reduced to a very limited number by the troops his Excellency required at St. Thomas-in-the-East and the other districts, I suggested to the Committee and Custos to raise volunteers from the respectable shopkeepers and tradesmen of Kingston, who would no doubt willingly defend their own houses and property. Dr. Bowerbank, the Custos (Saturday the 14th, at noon), with a zeal, activity, and energy, that has marked every action of his since this unfortunate outbreak commenced, went round Kingston; and at three o'clock I received a message from him that the citizens were assembling at Kingston Barracks, and desirous that I should see and address them; when I arrived, upwards of 300 of the most respectable class came cheering to the front for enrolment. Among others, Mr. Altamont de Cordova, the leading gentleman of the Jewish persuasion,

 submitted

submitted a roll of 30 gentlemen, and solicited my permission to raise a troop of irregular horse.

By sunset they were formed, well mounted, and paraded in front of Head Quarter House, the future rendezvous, in blue Garibaldi shirts, breeches, and jack boots, exhibiting a most soldier-like appearance, ready and willing to perform, as they have since done, any service required by me.

Lieutenant Colonel Elkington, 2nd Battalion, 6th Royal Regiment, acting as Deputy Adjutant General, in the absence of Brigadier General Nelson, organized into bodies the other volunteers, posting them in various parts of the city, and taking the superintendence of the whole, affording the benefit of his experience in forming a strong volunteer force, who, constantly under his immediate surveillance, universally express how honoured they feel in serving under so distinguished an officer.

In my opinion, one material point has been thus obtained, proving to the inhabitants of Kingston and adjacent parishes that "self-help is the best help," and that with confidence in themselves, they can form a ready and efficient defence against any future insurrection.

In the course of Saturday morning, the 14th instant, I directed Serjeant Roberts, lately discharged from the 1st West India Regiment, one of nine non-commissioned officers who proved such successful shots at Hythe, were paraded by me for his Royal Highness the Duke of Cambridge three years ago, and attracted by his smart and soldier-like appearance and Moorish cast of countenance the attention of his Royal Highness, to find out all the pensioners and discharged soldiers of 10 years' service, to tell them "their old colonel required them," that "they would receive the usual rate of pay and rations while so employed," and which the Executive Committee guaranteed to me the Colony would repay.

At 3.30 p.m. eighty (80) pensioners and discharged soldiers were enrolled, and double that number in two days, a most valuable reinforcement of steady, long-tried veterans, several having fought under me in Western Africa, and all anxious to serve their Queen. This enabled me to place a strong force in Kingston Barracks, the heart of the town, commanding the principal square and streets, capable of being made a rallying point and place of defence.

I detached, under an intelligent and experienced serjeant, twenty-two (22) enrolled pensioners to Rock Fort, commanding the high road from the disturbed districts to Kingston, replacing Captain Strachan and his detachment of the 1st West India Regiment, sent by express train to Spanish Town, where serious disturbances were anticipated, and adding fifty (50) enrolled pensioners to Captain Strachan's force the following day. Lieutenant Allinson and thirty-one (31) men of the 1st West India Regiment, the troops stationed at Spanish Town, having been pushed on ten (10) miles to Linstead, the magistrates reporting to me a "repetition of the Morant Bay tragedy was feared while the approaching sessions were held."

Last, not least, was removing upwards of a thousand (1,000) barrels of gunpowder from a most insecure and common building in Kingston, shipping and sending it to Port Royal, for it might have been tampered with by any incendiary, and fired, blowing the whole town into atoms.

All my available troops in the field, *vide* the accompanying state, an insufficient force to protect Newcastle and Up Park Camp, that of the latter composed chiefly of raw African volunteers from the 5th to the 4th West India Regiment, and not one man available for service if an outbreak took place, or necessity demanded a demonstration in any part of the island, I instructed Lieutenant Colonel Elkington, Deputy Adjutant General, that when Her Majesty's troopship "Urgent," hourly expected, arrived, to despatch her to Nassau for Major M'Bean, one captain, eight subalterns and two hundred (200) rank and file, or as many more as could be spared of the 1st West India Regiment, and the steamer "Plantagenet," hired and placed at my disposal by the Executive Committee, should proceed to Honduras for Lieutenant Colonel William Hill, whose courage, capabilities, and experience in African campaigning I was well acquainted with, and all the available men of the 2nd West India Regiment, thus insuring within eight (8) days a strong brigade of officers and men composed of the 1st and 2nd West Indian Regiments.

Sunday morning, at an early hour, Her Majesty's troopship "Urgent," anchored

anchored at Port Royal, but the commander did not report himself personally or by letter, or communicate what duty he was engaged in until the next day, Monday, at 11 o'clock, simply sending a detail of his instructions from the Commissioner of the Lord High Admiral, with a list of the persons he was to receive on board at the several stations the ship was to call at for embarking and landing troops.

In the course of the day I heard accidentally that the "Urgent" was ordered by Governor Eyre to Barbados, to fetch the 3rd Buffs from thence to Jamaica, and I felt no less surprised than chagrined, at this unusual unofficial arrangement of his Excellency, ignoring me altogether as the officer commanding the forces, responsible for their movements, alone qualified to judge what troops I required, and where they should come from, stultifying the arrangements I had already made with the Deputy Adjutant General for the safety and welfare of the Colony; in fine, acting contrary to the instructions laid down in the Queen's and Colonial Regulations.

The first opportunity I had the pleasure of meeting his Excellency, when he visited me at Head Quarter House on the 20th instant, and alone, I remonstrated with his assumption of a power he did not possess; and Lieutenant Colonel Elkington coming in on duty, I repeated in his presence this opinion, which drew forth the next day, the 21st instant, a letter from his Excellency. Copy, with reply, enclosed.

I, however, wrote to Major General Brook, commanding the troops in Barbados, to send me Colonel Whitfield and all available men of the 2nd West India Regiment, with as many of the 3rd Buffs as he thought fit, knowing that the Major General was thoroughly experienced in black troops, their qualifications, fitness, and capabilities for bush fighting, having been prominently and successfully engaged during the emancipation of the slaves in 1834, especially when martial law was in force at St. Kitt's; and I also requested Colonel Whitfield to join me, desirous to have the benefit of his knowledge of Jamaica, in which Colony he served for many years.

Being fully of Brigadier General Nelson's opinion, that "matter may still slumber, which fanned, will burst into flames;" and convinced from the recent, nay, present fearful disturbances, the unusual excitement cannot readily subside; that if even a few of the rebel leaders, or the worst of the insurgents, escape to other parts of the island, the ignorant and easily-influenced negroes may be led to revolt, considering that the white population numbers only 13,816, while the black and coloured amounts to 427,439. I intend, when the additional troops arrive, to make a tour round, over, and through the whole island, judging personally of the real aspect of affairs, placing detachments where I deem necessary, not to alarm or "ride rough shod over the people, but to awe the disaffected and protect the loyal and well-behaved subjects of the Crown; for, tracing back to former wars and rebellions, we find they demanded considerable time, patience, perseverance, judgment, and firm decided measures to finally suppress them.

And now, to me the most agreeable and satisfactory portion of my duty remains to be performed, submitting especially for the favourable notice of his Royal Highness the Field Marshal Commanding in Chief, the officers and soldiers who so promptly, cheerfully, and fearlessly have, under difficulties from climate, in the worst season of the tropical year, the dangerous and harassing nature of the country, carried on the operations. Scanty in numbers, but a host in gallantry, they performed their duty to Her Majesty and their country, saving from anarchy and desolation, a fate similar to the one that rendered Haiti what it is, the hot bed of dissensions, murders, robberies, civil wars; a government without discretion, prudence or power; a blot upon the civilized nations of the world, and the darkest page in the records of the African tale.

First and ablest in the field is Brigadier General Nelson; what more can I say of his services than that I have already recorded, "fortunate indeed for this Colony and the success of the military operations in the field my placing Colonel Nelson in command, for, cool, calm and decided, he maintains his own position without trenching on the rights of others."

Brigadier General Nelson brings to my notice the conduct of Captain Hole, commanding the detachment of his corps, 2nd Battalion, 6th Royal Regiment, "his judgment and decision, the perfect confidence he placed in him, in every

way carrying out his orders, proving himself not only an excellent officer, but, what is still more valuable, one of sound sense and judgment."

The intelligence and promptness of Captain Luke, 1st West India Regiment, who, by a rapid and judicious movement, on his own responsibility, was the means of rescuing from the hands of the rebels and a barbarous death, upwards of 80 Europeans and influential natives, with their wives, children, infants, and servants, taking refuge in the woods and mountains for three and four days, and conducted them to a place of safety; this act as well as that of Captain Hole, 2nd Battalion, 6th Regiment, who by equal energy and discretion saved many valuable lives, are imperishable records of their gallantry and humanity, and must be rewarded by the satisfactory approval of their own conscience.

Captain Luke reports that Captain Ross, 1st West India Regiment, cheerfully carried out all orders, and conduced by his conduct to the success of the expedition under Captain Luke; and that Ensign Cullen, 1st West India Regiment, "although a young officer, acted, on every occasion his services were required, to his entire satisfaction, displaying all the qualities of a good soldier."

Brigadier General Nelson mentions in the most favourable terms the unwearied zeal and patient enduring exertion of Lieutenant Adcock of the 2nd Battalion, 6th Regiment, aide-de-camp, and filling the important and responsible position of Assistant Commissary General to the troops, an office on which the comfort, health, contentment and efficiency of soldiers mainly depends.

Colonel Hobbs, commanding the division of his men, 2nd Battalion, 6th Royal Regiment, has been subjected to many and great difficulties, arising specially from the constant heavy rain and the harrassing nature of the country he had to march through, otherwise I have little doubt he would have advanced more rapidly on "Stony Gut," described in his despatches as the stronghold of the rebels, and secured its possession before being occupied by Lieutenant Oxley, Royal Navy, and his gallant band of sailors and marines, whose services Brigadier General Nelson brings especially to my notice; but when has it ever been otherwise with the "Blue Jackets," firm, faithful, enduring, and brave, and never more so than on this occasion in the person of Lieutenant Oxley and the men under his immediate command.

On Brigadier General Nelson taking the command of the troops in the field, I appointed Lieutenant Colonel Elkington, 2/6th Royal Regiment, my Acting Assistant Military Secretary, to conduct the duties of Deputy Adjutant General.

Lieutenant Colonel Elkington has already acquired in the Kaffir Wars, Crimean Campaign, the Indian Mutiny, and the China Expedition, a distinguished character as a staff officer, and the ability, zeal, and unwearied attention with which he has performed the responsible and arduous duties of his office during the present rebellion, proving him an able adviser and invaluable assistant to me, deserves not only the highest commendation, but is a patent proof that the honours and rewards already bestowed on Lieutenant Colonel Elkington were well earned and justly merited.

Captain Johnston, 1st West India Regiment, my acting aide-de-camp, by his prudence, attention, excellent temper, and suavity of manner, saved me considerable trouble; for it was no easy task, and demanded no light amount of tact and discretion, to receive the numerous visitors of all classes, castes and colours, hear their various claims, and afford general satisfaction.

The men employed in the field exposed to the tropic sun, heavy rains, constant and long marches by day and night, have all—the Royal Artillery, 2nd Battalion, 6th Royal Regiment, and 1st West India Regiment—highly distinguished themselves for their patience, perseverance, steady discipline, and general good conduct. Not a case of intoxication has occurred, or of a soldier leaving the ranks.

Captain Hole, 2nd Battalion, 6th Regiment, in a despatch to Brigadier General Nelson, mentions a meritorious act of three privates, 1st West India Regiment, deserving commendation; the three men got separated from their party and proceeded as far as the Plantain Garden River, where a great number of rebels are lurking; the soldiers, encountering the rebels, shot several, three of whom were the murderers of Mr. Hire, and brought with them two cart loads

loads of recovered property, some belonging to Mr. Hire, as in one of the packets of a coat of the murdered man, Captain Hole discovered two letters with the crest similar to that on two teapots; they also brought in various articles of property not yet identified. Captain Cole adds, "I consider these three men have done good service."

I enclose a map of the district and parishes, the scene of our field operations, furnished by Captain Kerr, R.E., which will clearly exhibit the mountainous country, the numerous defiles and rivers, and afford a slight idea of the dangers and difficulties the several commanding officers and their men had to struggle against.

I send also a list of rebels and political prisoners that were taken and lodged in Up-Park Camp under the command of Major Anton, 1st West India Regiment. Among the prisoners are some Haytians, two generals and their sons, whom the civil authorities of Kingston had arrested on suspicion of being in communication with or inclined to incite the rebels. And here it is only an act of justice to a steady and highly deserving officer, Major Anton, 1st West India Regiment, to record the valuable assistance he has afforded, and the judicious manner he conducted the command of the 1st West India Regiment at Up Park Camp; his arrangements for the safety and security of the numerous rebels and prisoners crowded upon him, his promptitude in furnishing the detachments called for, and the discretion, decision, and humanity he has displayed deserve the highest commendation.

General Lubin,
Joseph Lubin,
Anacreon Lubin,
Villias Lubin,
General Sol. Jeune,
Emilie Pierre.

When Governor Eyre decided to visit the seat of insurrection with Lieutenant Colonel Nelson, Deputy Adjutant General, Captain Hunt of the Royal Marines accompanied his Excellency as aide-de-camp; this officer being promoted Colonel and Inspector General of Volunteers, I deemed it necessary to request the Governor would issue the commission of Brigadier General to Lieutenant Colonel Nelson.

When I received Brigadier General Nelson's first despatch, the Governor suggested in a letter to me that "the public were so interested in hearing what was going on, that if I had no objection to the communication despatch being made public, or such portion of it as I thought right, it would be highly appreciated, and could do no harm in a country like Jamaica, and may do good." Coinciding with the views of his Excellency, I have from time to time permitted certain despatches or portions of them to be made public, and the effect has, as the Governor suggested, "done good," calming the minds of the public, exhibiting the real state of operations, and dispersing idle, false, seditious reports and alarming rumours circulated by ill-disposed malicious people, secret malcontents, aiders and abettors of the rebels.

I have entered fully into all details connected with the unhappy and unfortunate outbreak—not a mere factious *émeute* for some real or imaginary wrong; not a strike among the lower orders for an increase of wages or redress of grievances; not even a political riot and party-spirit contest between people of opposite creeds and opinions, but a deep-laid plot, organised for some time, the seeds of rebellion sown by clever, educated men, one at least a member of the House of Legislature, executed yesterday, and the representative of an important district, among a large body of ignorant, easily-led, misguided peasantry—meetings held where seditious language was freely and frequently used, proclamations ably and craftily concocted, widely circulated through the public post, the whole leading to the massacre of innocent, unoffending, helpless individuals, with a ferocious savageness almost unknown among the cruelest of the African tribes; an insurrection which, if not promptly and vigorously nipped in the bud, might have burst into a general rebellion, decimating, if not utterly destroying, the white population, spreading desolation, famine, misery, and all the horrors of war, throughout the length and breadth of Jamaica.

I have, &c.
(signed) *L. Smyth O'Connor*,
Major General Commanding Forces.

To the Military Secretary,
Horse Guards, London.

Enclosure 5, in No. 1.

Port Antonio, 19 October 1865, 8 a.m.

Sir,

Finished at Morant Bay, 20th October.

My last report was transmitted from this on the 17th instant. I have not since received any despatch from Captain Hole. H.M.S. "Wolverine" anchored at this port at 5.30 p.m. yesterday, the 18th, having touched at Morant Bay, and brought me a report from Lieutenant Oxley, R. N., informing me that, in accordance with my instructions, he should move from Easington to Morant Bay; and that Justices M'Lean and Snaith were procuring carts and horses for the men, thus enabling him to arrive at Morant Bay without fatigue, and to be ready for any movement required, and expected to reach at 12 midnight, which he accomplished. Finding my order for a party to proceed to Stoney Gut, Lieutenant Oxley, not having the 2/6th Detachment under Captain Field, as I anticipated, made up the number deficient with men of the Naval Brigade, and about 3 a.m. on Wednesday, 18th October, marched on Stoney Gut. Previous to departure from Morant Bay of H.M.S. "Wolverine," his Excellency the Governor received a short pencilled memorandum from Lieutenant Oxley, of his having found the position at Stoney Gut evacuated. I myself have not had any report; time would not admit.

Copy of letter herewith marked "A." found at Stoney Gut by Lieutenant Oxley, R.N.

I have authentic information that the rebels were in force (what number very uncertain), but I apprehend 300 would be the maximum; but, unless I see for myself, I doubt reports coming constantly from alarmists. It would be superfluous my offering a remark on the manner Lieutenant Oxley has performed the several duties entrusted to him; the rapidity of his movements will, by the hours and dates I have given herein, speak more forcibly than words; and it is to myself a source of infinite satisfaction to have under my command an officer possessed of such zeal and energy; it is my intention to make this known to Lieutenant Oxley, and hereafter consider it my duty prominently to bring to your notice the good service he has performed.

During the absence of H.M.S. "Wolverine" a court-martial sat here and condemned several rebels to death, and, having approved and confirmed, the sentences were carried into effect by hanging them on "gallows" erected at the junction of the street and road leading to Manchioneal, in close proximity to the church; this spot I selected so that passers-by might profit by the example.

I find H.M.S. "Wolverine" has on board, as prisoner, Mr. G. W. Gordon, a Member of the House of Assembly; Morant Bay must be the place to examine into his case.

This morning, arms and ammunition have been landed and handed over to Colonel A. G. Fyfe, for the purpose of arming the Mooretown and Charlestown "Maroons," he being commanding officer of the same. At 11.30 this morning I embark the detachment named in the margin on H.M S. "Wolverine," and proceed to Morant Bay with his Excellency the Governor. I leave this post in charge of Captain Luke, 1st West India Regiment, and with force sufficient for any emergency.

Twenty men 2/6th Regiment, part of Captain Hole's Detachment.

A field-gun, with detachment Royal Artillery, under Lieutenant Nash, remains here (Port Antonio). Captain Luke's orders are to remain till further instructions, it being my opinion that, for the present, the following should be fixed posts: Port Antonio; Manchioneal; Morant Bay; Easington; and I am quite prepared to hold them with the united force under my command. My return to Morant Bay is indispensable for many reasons; moreover, there are numerous rebels awaiting trial, said to have been implicated in the murders, &c., at the Court-house; and as the rebellion first broke out there, I have little inclination to permit delay in bringing them to justice, and, however painful it may be to sign "death-warrants," yet, if duty commands it, I shall do so without the least hesitation. So far as I can judge, but information may change them, my plans are,—to visit Morant Bay, and there see what movements will be judicious as regards the troops at Morant Bay and Manchioneal. For the Charlestown Maroons to patrol along the road from Charlestown towards Newcastle, to the south; and up the Coast as far as Hope Bay, guarding the Swift River pass; leaving men in ambush during the day, and scouring the woods about Lennox's and Low Layton estates. The Mooretown Maroons to march according to orders entrusted to Colonel Fyfe, and which may be liable to change from information. I therefore have left much to his discretion, especially as he commanded the Maroons during the last rebellion, and is moreover a most discreet officer. The Mooretown Maroons to station a guard at Mill Bank to watch the Cunha Cunha Pass, and a sufficient force to protect Mooretown. All arrangements are hourly liable to change, but the above is a rough sketch of the proposed operations. The country around this and within a radius of 10 miles is quiet.

Three men of 1st West India regiment will arrive in "Wolverine," "sick," but not from effects of exposure; the remainder here "well," and not a sick man left at this post (Port Antonio). At the moment of leaving Port Antonio (11.15 a. m.) 19th instant, I received a despatch from Captain Hole, commanding Manchioneal Post, which is marked "B.," and enclosed. The whole of the arrangements of Captain Hole, and his mode of carrying out the same, still commands my entire approval. H.M.S. "Wolverine," on approaching Manchioneal Bay, fired signal-guns; when abreast, lowered two boats, and I sent my aide-de-camp, Lieutenant Adcock, 2/6th on shore to bring off refugees: not one came from Muirton; the house in which the troops are quartered, distant 1½ mile from the pier, and visible to us from the deck. Lieutenant Adcock found a party of 2/6th under Ensign Lewis, awaiting his arrival, so that as this detachment had time to march down from its quarters it is evident that "will" alone was wanting with the refugees; had not

Captain

Captain Hole been out on an expedition, I doubt not he would have caused them to embark. Lieutenant Adcock landed some rum for the use of the detachment, and according to his orders, after waiting a fix period, returned to the ship, and we arrived at Morant Bay at 6 p.m. Lieutentant Oxley, R. N., came on board, handing me the enclosed report, marked "C.," and which confirms the statement I mentioned in third paragraph of first page of this letter. I have made the subject of last paragraph of Lieutenant Oxley's letter a subject of a separate communication, and which you will receive by same post as this. I am pleased to report the health of the troops, including the Naval Brigade here, is excellent; supplies plentiful.

Many prisioners awaiting trial, and to-morrow morning (20th) I shall issue whatever orders are needed; but I shall give particular attention to the housing of the troops, now occupying an unroofed church, and tents.

This position was taken up on the arrival of troops at first outbreak, and was selected by Captain De Horsey commanding H.M.S. "Wolverine," with great judgment, it being in a strategetical point of view the best which could have been selected. Now matters are more settled, it is expedient to provide roofs over the men's heads; and I shall occupy any houses in the town most adapted, as the behaviour of the inhabitants at the late massacre places them beyond the pale of consideration. I shall resume this report to-morrow, and give you every information possible.

Friday, 20th October at 6, 30 a.m., Morant Bay.

I WENT on shore, found all correct, selected houses for the troops to occupy, and they go in after getting their dinners. Captain Levi, commanding mounted special volunteers, requested permission to return to Kingston; and as he informed me that you had told this corps that their services were alone required in the neighbourhood of that place, I desired them to quit this post at 11 a. m. Captain Astwood, commanding mounted volunteers, I have kept under my orders, and it is due to this officer to state he was most willing to place his services at my command. At 12. 30 p. m. this day, the detachment per margin, marched to re-occupy the post of Easington.

70 men, Royal Marines and Blue Jackets, under command of Lieut. Oxley, R.N.

Some 40 men came up this morning in H.M.S. "Onyx," and are desirous to proceed to their estates, situate at or near Plantain Garden River: they have arms. I have determined to-morrow morning to make a raid into that district, and then "Onyx" to take troops from this to Port Morant, disembark them, and troops to move on "Post Office," mid-way between Bath and Manchioneal. I have directed Captain Hole to detach a party from Manchioneal to same place (Post Office), and there effect a junction; from thence the officer proceeding in command, Lieutenant Adcock, 2/6, aide-de-camp, will scour the country about Plantain Garden River and Golden Grove: those rebels escaping should fall into the hands of the Maroons now around and in the field.

If fortune attends this expedition, it will be of infinite service: three days will be the extent of the absence of this party from this post, and where, *pro tem.*, I shall remain.

The trial of prisoners will be forthwith proceeded with. As the "Wolverine" proceeds to sea at 12 noon, I must conclude.

Captain de Horsey, commanding Naval Forces, has placed at my disposal the two gunboats, for which I feel deeply indebted, as it places the means of communication within control. Arms, ammunition, accoutrements, and boots arrived.

I have, &c.

(signed) *A. A. Nelson,* Brigadier-General.
Commanding Field Force.

P.S. I have not any copy of this letter or documents attached.

Major-General O'Connor, C.B.
Commanding Forces, Jamaica.

Enclosure 6, in No. 1.

Sir, Morant Bay, 22 October 1865.

IN a report from this place, I stated it to be my intention to detach troops to Easington.

I have now the honour to report their safe arrival at that post; though consequent on the Morant Bay River being very much swollen, the passage of the force was attended with infinite danger. The detachment of mounted volunteers from Captain Astwood's troop behaved nobly on the occasion; but Lieutenant Oxley, R.N., commanding detachment, has in his report so well described the crossing of the river, that I beg to transmit the same for your information.

October 21st, 8 a.m. Easington.

I have likewise received a report from Lieutenant Adcock, 2/6th, aide-de-camp, under whose command I placed one party consisting of some 35 planters, &c., belonging to Plantain

Astwood's troop, 10 troopers of mounted volunteers under command of Captain Astwood, 10 R. and F. 2/6th Regiment.

Plaintain Garden District and Golden Grove, who desired to return to their estates. I supported this party with, as per margin.

I also sent a messenger to Manchioneal with orders for the officer in command to detach one officer and 50 rank and file, with orders to march on a certain point to form junction with Lieutenant Adcock's party: this has been accomplished, and during the next few days Lieutenant Adcock will scour the Plantain Garden District, and by the valuable aid he will derive from the local knowledge of the planters with him, I feel confident Lieutenant Adcock will render a good account of the rebels; and I cannot but congratulate myself in having so able and judicious an officer at my disposal to send in command of so mixed a body, though I myself much miss his services as aide-de-camp, and his commissariat duties I carry on myself, for every officer is engaged on duty day and night.

Captain Luke, commanding Port Antonio Post, and Captain Hole, commanding Manchioneal Post, report all well with their respective posts.

You will read in Lieutenant Oxley's report how well the troopers, "Astwood's," behaved; and it gives equal pleasure to inform you that Lieutenant Adcock speaks in the highest terms of Captain Astwood and his troopers, and especially notes the silence observed by them and the discipline they maintained.

It is most satisfactory to find that in the hour of need the volunteer force can do good service; too much praise cannot be given to Captain Astwood and his troop.

Prisoners are being brought in very fast, known murderers of Messrs. Cooke, Watson, &c., and they will be brought to trial. It will take some time for these trials, as I have so few officers here available for courts martial, and I consider it more beneficial to have my detached parties well officered than to keep them here for the trial of rebels. Colonel Lewis, St. Catherine Militia, and Captain Espeut, Kingston Militia, work very hard; being on courts from 8 a.m. till dusk, these officers' services are most valuable to me.

I have directed the gun-boat "Nettle" to proceed at an early hour this morning to Manchioneal with boots for troops; the breeze sprang up so strong, that it would have been impossible for her to get round Morant Point; she therefore remains in this roadstead.

I find the detachment at Easington has a naval medical officer; it is therefore not necessary to send one from Kingstown: in fact, I do not require any medical officer with my troops at present, and knowing the paucity of these officers in your command, I shall endeavour to abstain from depriving you.

From the reports I have received from officers commanding out-posts and the information I gather, I consider, so far as I can form an opinion, that in these immediate districts the rebellion has been nipped in the bud.

I have, &c.
(signed) *A. A. Nelson*, Brigadier General,
Commanding Field Force.

Major-General O'Connor, C.B.,
Commanding Forces, Jamaica.

Sub-Enclosure (D.), in No. 1.

Easington Court-house,
21 October 1865, 8 a.m.

Sir,

I HAVE the honour to report for your information my arrival at this place, having left Morant Bay yesterday at 1.30 p.m. On my arrival at Morant River I found it very much swollen, and so rapid that it was almost impassable; and had it not been for the assistance rendered me by Serjeant-major Beckett, with his troop of volunteers, I should have had very great difficulty in getting across with my men. The fording caused such a delay, and had such a tiring effect on the men, that I did not reach Yallah's Bay until nearly 7 p.m., when I was compelled to call a halt, and take up my quarters in the church; and starting from it at day-break this morning, arrived at Easington Court-house at 6.30 a.m.

While fording Morant River two or three men would have lost their lives had it not been for the exertions made by Serjeant-major Beckett, Mr. J. Smith, and Mr. R. E. Artice, who picked up one man on the point of sinking.

One stand of arms was lost in the river, and the man to whom it belonged was sent to head quarters, as he would be useless to me without. A few minor articles have also been lost.

I have, &c.
(signed) *L. L. Oxley*,
Lieutenant, Royal Navy, Commanding.

Brigadier General Nelson,
Commanding Field Force, Morant Bay.

Justice C. M'Lean reports to me that the neighbourhood is quiet, but that there are a few rebels in the neighbouring swamps.

Enclosure 7, in No. 1.

(Advance on Somerset.)

Moncklands, St. Thomas'-in-the-East,
Sir, 10 p.m., 17 October 1865.

I HAVE the honour to report that after one of the most arduous day's work, having been 15 hours marching continually, I have returned here.

I started at daylight this morning for Somerset, where every man is in open rebellion against the Crown, with the exception of about six houses, occupied by women; we found the holdings vacated, and the armed rebels drawn up to the top of the hills, where, although the position favoured them, the distance favoured us, as their weapons are chiefly old muskets and ours Enfield rifles. I have never seen farms in such order nor such perfect comfort in any part of the world, as in this rebel district of Somerset; were they not rebels, it would be the model district in the British Colonies. We utterly routed the rebels and destroyed every house belonging to the insurgents, and sparing all belonging to those even nominally loyal. The furniture, coffee grounds, cane pieces, and provision grounds indicate the utmost comfort; and the blocks of lead, blood-stained cutlasses, bullet moulds and arms, prove beyond doubt the premeditated nature of the rebellion. We found numerous "tea-meeting" tickets to "discuss politics." We destroyed the houses and grounds of the celebrated rebel D. McLaren Graham. It was my intention to have bivouacked for the night at a place called the Barracks, the residence of the late Mr. McPherson, who was murdered in a manner too barbarous to detail, and had arrived there for that purpose; we had hardly arrived here, and the men, quite worn out, had taken off their boots to ease their blistered feet, when the rebels rushed up the road in great numbers to surprise us; the gallant men under my command instantly seized their arms and pursued them for several miles, although without boots, firing into them and killing them until they disappeared in the bush.

From this we went on to Coolie, the property of Mr. Bourne, the gentleman who so narrowly escaped with his life, and under the instructions of the best authorities, fired the houses of the rebels in this district (also greatly disaffected), and sparing all innocent people and their houses.

The conduct of the troops was noble, humane, and orderly, and not a single man fell out, or is now laid up after 15 hours' march.

General Jackson has never left us from the first, and his pluck and daring is the wonder of all.

I am not in a position to attack Stony Gut, but hope to do so before many days, if at all practicable. I have detained Assistant Commissary General Gibbs, and find I cannot possibly part with him; he is most invaluable and obliging.

I have, &c.
(signed) *T. Francis Hobbs*, Colonel,
6th Royals, Commanding Central Division,
St. Thomas'-in-the-East.

To H. E. Major General O'Connor, C.B.,
Commanding the Forces, Jamaica.

Enclosure 8, in No. 1.

H.M.S. "Wolverine," at Morant Bay,
Sir, 12 October 1865.

I HAVE the honour to forward for your perusal a copy of a letter I have this day addressed to his Excellency the Governor in Chief, and would desire to urge on you the necessity of reinforcements being speedily sent, for which purpose the "Wolverine" returns to Port Royal.

I have, &c.
(signed) *A. M. de Horsey*,
Captain and Senior Officer.

Major General L. S. O'Connor, C.B.
&c. &c.

Enclosure 9, in No. 1.

Head-Quarter House, Kingston,
18 October 1865.

Sir,

I HAVE the honour to acknowledge the receipt of your several Despatches, as per margin,* and Enclosures.

*No. 1.—Morant Bay, 14th October 1865; H.M.S. "Wolverine."
No. 2.—H.M.S. "Wolverine," Port Antonio, 15th October 1865.
No. 3.—Port Antonio, 16th October 1865.
No. 4.—Port Antonio, 17th October 1865.
Capt. Luke, 1st W. I. Reg., Port Antonio, 16th October 1865.
Capt. Hole, 2/6 Roy. Reg., Manchioneal, 16th October 1865.

In the first instance, I take leave to convey my unqualified approbation for the prudent, energetic, and masterly way you have conducted the movements of the troops in the field under your command in the present campaign—difficult and dangerous, from the mountainous and densely-wooded nature of the country, and of the savage enemy which you contend with.

The very favourable terms you make mention of Captain Hole, 2/6th Royals, who has in every way carried out your orders, and "proved himself not only an excellent officer, but, what is still more valuable, one of sound sense and judgment."

The great intelligence and promptness of Captain Luke, 1st West India Regiment, who, by a rapid and judicious movement, was the means of rescuing from the murderous hands of the rebels, and a barbarous death, upwards of 80 Europeans and natives, several of the former old magistrates and influential landholders, with their wives, families, and servants, affords me more than ordinary satisfaction.

Captain Hole, 2/6th Royals, has displayed no less energy and discretion, saving very many valuable lives.† His decided measures against the insurgents, promptly punishing offenders caught "red-handed," razing the houses of plunderers, and threatening to pursue the same course against the insurgents who had spoil in their possession, must produce the most salutary effect in checking the spread of the insurrection.

†*List of people rescued up to 4 o'clock a.m., 16th.*

Rev. A. Bourne,
Miss Gibbs,
Master A. Bourne,
Master H. Bourne,
Nurse Jacobs,
Mrs. Warrington and baby,
F.G. Fleming, Esq., J.P.
Miss E. Fleming,
Miss F. Fleming,
Mrs. Bunting and baby,
Miss Jane Noyes,
Miss E. Westmoreland.

Captain Luke, 1st West India Regiment, in his report brings particularly to your notice the untiring exertion of Captain Ross, 1st West India Regiment, who cheerfully carried out all orders, and conduced by his conduct to the success of the expedition; and of Ensign Cullen, 1st West India Regiment, who, though a young officer, acted on every occasion that his services were required to his entire satisfaction, displaying all the qualities of a good soldier.

I request you will convey to the officers named, my approbation of their conduct.

I am more than gratified by your favourable report of the admirable conduct of the soldiers of the 1st West India Regiment, their thorough loyalty, abhorrence of the murders committed, implicit obedience, and rigid discipline, practically proving that the opinion entertained by Governor Eyre, in his letter to me of the 12th October 1865, applying for additional force, in which he says, "Considering that the outbreak is by the black population, and that some of the soldiers of the 1st West India Regiment may be creoles of this country, and be connected by ties of relationship or of sympathy with some of the disaffected peasantry,"—inferring they would not do their duty, was erroneous, and that my opinion, given to his Excellency yesterday, respecting the merits of the West India soldiers, is correct.

I have to regret the extraordinary delay of Captain Field, 2/6th Regiment's party, under command of Colonel Hobbs, 2/6th Royal Regiment; nor can I understand why an advance has not been made upon Stony Gut, as stated, in Colonel Hobbs' despatch to me, was projected—which, had it been done, would have enabled you to have advanced from Port Morant at the same time as the "Manchioneal" party, thus causing a junction of the two midway between the places, namely, at "Plaintain Garden River," and thereby imminently assist you in cutting up the rebels.

I coincide entirely in your opinion, that time, however, is of such infinite import, that you ought not to await till the strength of the forces at Morant Bay enabled you to detach a party.

The mounting of a portion of the 1st West India Regiment was a most happy and admirable thought, ensuring saving of time, celerity, and facility of carrying out your movements.

The boots required for the men of the 2/6th Regiment, who appear to have marched off the soles of theirs, were embarked this day in H. M. Gunboat "Steady," for Port Antonio.

Colonel Elkington, 2/6th Regiment, acting as Deputy Adjutant General, with his usual forethought and promptitude, had already despatched 30,000 rounds of ammunition.

A party of 45, 2/6th Royal Regiment, under command of Captain Harmond, 2/6th Regiment, marched yesterday at 2 p.m. from Newcastle to Buff Bay.

This will assist materially towards your plan of hemming the rebels within an equilateral triangle.

H. M. S. "Urgent" arrived at Port Royal on Sunday at 10 a.m., but her commander failing to report himself personally or officially to me, left me in total ignorance of the nature of the duty he was employed on.

I heard, however, by accident that Governor Eyre had ordered the "Urgent" to Barbados, to fetch the 3rd Buffs to Jamaica.

Had his Excellency thought fit to consult, or even to communicate with me, as the General Commanding the troops, and adhered to the instructions laid down in the Queen's and Colonial Regulations, issuing such orders respecting any military service the safety

or

or welfare of the Colony rendered necessary, leaving to me the carrying out of the same into execution, as I alone am responsible for the prompt and efficient performance of their details. I would have sent the "Urgent" to Nassau for every available man of the 1st West India Regiment, and the hired steamer "Plantagenet" to Honduras for Lieutenant Colonel Hill and the 2nd West India Regiment, bringing the troops under my immediate command to Jamaica, saving thereby needless delay of time and expenditure.

However, I made the best of the move by writing to Major General Brooke, commanding the forces at Barbados, an old and experienced officer in the tropics, and well acquainted with black troops, to send Colonel Whitfield and all the disposable men of the 2nd West India Regiment, with as many of the 3rd Buffs as he thought fit.

I expect the "Plantagenet" will arrive about the 24th, and the "Urgent" the 28th or 30th instant.

Rumours of disturbances at Linstead during the sessions yesterday, and disaffection at Spanish Town, reaching me on the 16th instant, I ordered by telegraph Lieutenant Allinson and his party of the 1st West India Regiment to proceed at once from the latter to the former station, and replaced them by Captain Strachan and the men of the 1st West India Regiment from Rock Fort.

To-day I increased the garrison at Spanish Town, by the 12 o'clock train, with 50 men detached from the enrolled pensioners, placing a force of 110 men under Captain Strachan in the supposed disturbed district.

The enrolment of the pensioners has proved a great success, and we will soon have upwards of 200 well-tried veterans, and men of 10 years' service, available for any duty.

Colonel Hobbs 2/6th, Royal Regiment, is by no means so decided as yourself or Captain Hole with the prisoners he captures, but sends them in parties to Up-Park Camp on superficial charges, instead of disposing of these cases summarily, and thus saving me needless trouble.

In conclusion, I reiterate my perfect confidence in your ability, judgment, and discretion. It is all well enough to award me credit for prompt action and judicious orders, but had I not experienced and able officers ready and willing to carry out the most important or most trifling instructions given by me, like yourself and Lieutenant Colonel Elkington, 2/6th Royal Regiment (who assists and relieves me in every way), the task I am now performing would be one of no little difficulty and painful anxiety, instead of an undertaking I feel convinced must be crowned with the most honourable and satisfactory results to every officer engaged in it.

I have, &c.

Brigadier General Nelson,
Commanding Field Force.

(signed) *L. Smyth O'Connor*, Major General.

Enclosure 12, in No. 1.

STATEMENT of Civilian Prisoners Confined at Up-Park Camp from the 14th to the 23rd October 1865.

NAMES.	When Confined.	REMARKS.
Joseph Thompson -	14 October 3 p.m.	Tried by court martial, flogged, and released.
Richard Prendergast -	14 October 8 p.m.	Sent to Port Morant for trial.
William Henry - -	15 October 2 p.m.	Released, being deemed innocent.
James Blisset - -	16 October 7 a.m.	Ditto - - - ditto.
William M'Leod -	16 October 11 a.m.	Tried by court martial, flogged, and released.
James Beard - -	16 October 1 p.m.	Sent to Port Morant for trial.
Henry Brown - -	17 October 7 a.m.	
Edward Lodge - -	Ditto - - ditto	
John Karr - -	17 October 8 p.m.	
—— Mosely - -	Ditto - - ditto	Tried by court martial, flogged, and released.
Douglas M'Gowan -	Ditto - - ditto	
Richard Francis -	Ditto - - ditto	
Lendrick Wilson -	Ditto - - ditto	Tried by court martial; sentence not promulgated.
Thomas Gardner -	Ditto - - ditto	
Thomas Williams -	Ditto - - ditto	Tried by court martial; sentence not promulgated.
Gilbert Francis - -	Ditto - - ditto	
James Reid - -	Ditto - - ditto	
Nicholas Durrant -	Ditto - - ditto	
George Anthony -	Ditto - - ditto	Tried by court martial; sentence not promulgated.
Henry Francis - -	Ditto - - ditto	
Mary A. Colbourne -	Ditto - - ditto	Released, being deemed innocent.
Sarah White - -	Ditto - - ditto	
Thomas Douglas -	18 October 8 a.m.	Tried by court martial; sentence not promulgated.
John Virgin - -	Ditto - - ditto	Tried by court martial; sentence not promulgated.
William Hamilton -	Ditto - - ditto	Released, being deemed innocent.
George Melvin - -	Ditto - - ditto	

Names.	When Confined.	Remarks.
James Spencer	18 October 8 a.m.	Released, being deemed innocent.
Richard M'Key	18 October 11 a.m.	
Mary Anne M'Key	Ditto - - ditto	
Jane Williams	Ditto - - ditto	
Robert Kirkland	18 October 1 p.m.	Sent to Port Morant for trial.
J. A. Lutas	Ditto - - ditto	Ditto - - - ditto.
George Harris	Ditto - - ditto	Ditto - - - ditto.
James Nixon	Ditto - - ditto	Ditto - - - ditto.
Samuel Harris	Ditto - - ditto	Ditto - - - ditto.
John Patterson	Ditto - - ditto	Ditto - - - ditto.
Richard Harris	Ditto - - ditto	Ditto - - - ditto.
Charles Francis	Ditto - - ditto	Ditto - - - ditto.
Francis Reid	18 October 6 p m.	Released, being deemed innocent.
Daniel Hart	18 October 6.15 p.m.	
James Anderson	18 October 7 p.m.	Sent to Port Morant for trial.
Wm. Kelly Smith	19 October 7 a.m.	Sent to Port Royal, on board "Aboukir."
E. Goldson	Ditto - - ditto	Ditto - - - ditto.
Isaac M. Vaz	Ditto - - ditto	Ditto - - - ditto.
Robert Osborne	19 October 11.30 a.m.	Released, being deemed innocent.
Thomas Rennie	Ditto - - ditto	
David L'Hoste	Ditto - - ditto	
James R. Birch	Ditto - - ditto	
James Robertson	Ditto - - ditto	
Wm. Joshua Rowley	Ditto - - ditto	
Edward Prince	Ditto - - ditto	
William Moore	Ditto - - ditto	
James Sylvester	Ditto - - ditto	
Denis Fuler	Ditto - - ditto	
Stephen Telfer	Ditto - - ditto	
William Darnce	19 October 5 p.m.	
James Darnce	Ditto - - ditto	
William Bood	19 October - 5 p.m.	
James Uniacke	Ditto - - ditto	
William Robinson	Ditto - - ditto	
H. J. Dick	19 October - 6 p.m.	Sent to Port Royal, on board "Aboukir."
Thomas M'Lean	Ditto - - ditto	Ditto - - - ditto.
David Wheeler	Ditto - - ditto	
Alexander Miller	Ditto - - ditto	Sent to Port Royal, on board "Aboukir."
John H. Crole	20 October - 6 a.m.	Ditto - - - ditto.
William M'Cormack	Ditto - - ditto	Ditto - - - ditto.
Thomas Harry	Ditto - - ditto	Ditto - - - ditto.
Alexander Jeffries	Ditto - - ditto	Ditto - - - ditto.
James Roche	Ditto - - ditto	Ditto - - - ditto.
John Williams	Ditto - - ditto	
Thomas Reid	Ditto - - ditto	
General Lubin	20 October - 5 p.m.	Haytian.
Joseph A. Lubin	Ditto - - ditto	Ditto.
Anacreon Lubin	Ditto - - ditto	Ditto.
Villias Lubin	Ditto - - ditto	Ditto.
General Sol. Jeune	Ditto - - ditto	Ditto.
Emile Pierre	Ditto - - ditto	Ditto.
Jean Bart	Ditto - - ditto	Ditto.
Frederick Walker	20 October - 7 p.m.	
Francis Kellerman	20 October - 7 a.m.	Sent to Port Royal, on board "Aboukir."
Samuel Clarke	21 October - 7 a.m.	
John Wood	Ditto - - ditto	
Henry N. Harris	Ditto - - ditto	Sent to Port Royal, on board "Aboukir."
Edwin Palmer	Ditto - - ditto	Ditto - - - ditto.
Robert Davis	Ditto - - ditto	Ditto - - - ditto.
Solomon Le Moth	21 October - 1 p.m.	Haytian.
Archilde Cyees	Ditto - - ditto	Ditto.
Jane Brown	21 October - 11 a.m.	
Alice Muddox	Ditto - - ditto	
Thomas Richards	21 October - 2 p.m.	
Alfred Despuit	Ditto - - ditto	
William Amos	22 October - 7 a.m.	
Joseph Oleiva	Ditto - - ditto	Haytian.
George Williams	Ditto - - ditto	
Matt. C. Benuzzi	22 October - 8 a m.	Italian.
Fred. A. Burt Vinen	Ditto - - ditto	English.
Edward Curtin	Ditto - - ditto	
Robert Brown	22 October 4 p.m.	

(signed) *J. H. Prenderville*, Major Unattached,
Provost Marshal.

The Deputy Adjutant General, &c. &c.,
Jamaica.

Enclosure 13, in No. 1.

APPROXIMATE STATE of the TROOPS in *Jamaica* Head Quarters, 23rd October 1865.

DISTRIBUTION.	Field Officers.	Captains.	Subalterns.	Medical Staff.	Sergeants.	Drummers.	Rank and File.	TOTAL, Exclusive of Officers.
At Up-Park Camp - -	2	–	3	2	6	3	190	199
„ Newcastle - - -	–	2	2	1	6	2	150	158
„ Port Royal - - -	–	1	1	1	4	1	70	75
„ Kingston - - -	1	2	2	2	6	1	120	127
„ Spanish Town - -	–	1	–	–	2	1	120	123
„ Monklands - - -	1	2	3	1	7	1	105	113
„ St. Thomas-in-the-East -	1	3	4	1	8	2	360	370
„ Buff Bay - - -	–	–	1	–	2	1	47	50
„ Rock Fort - - -	–	–	–	–	1	–	20	21
„ Vere - - - -	–	–	1	–	2	–	42	44
„ Linstead - - -	–	–	1	–	1	–	20	21
„ Fort Augusta - -	–	–	–	–	–	–	–	6
„ Apostles Battery - -	–	–	–	–	–	–	–	6
*TOTAL - - -	5	11	18	8	45	12	1,244	1,313

* The Corps of Enrolled Pensioners included in this Total.

L. Smyth O'Connor,
Major General Commanding.

Enclosure 15, in No. 1.

King's House, Spanish Town,
21 October 1865.

Sir,

AT an interview which I had with you yesterday, your Excellency was pleased to assert, in the presence of Lieutenant Colonel Elkington, that in sending Her Majesty's troop ship "Urgent" to Barbadoes for additional troops for this Colony, I had exceeded my authority as Governor, and interfered with that of yourself as General commanding Her Majesty's troops in the Jamaica Command.

As I then informed you in reply, I considered myself acting strictly within my own powers, but that under no circumstances whatever had I, or could I have, the slightest wish or intention, either to usurp your powers or to act with any want of courtesy towards you.

I have received prompt and cordial co-operation from you from the commencement of this unfortunate outbreak up to the present time, and I should be most unwilling that any misapprehension should now arise to disturb that good understanding between us which is so essential to the public interests.

My view of our relative positions with regard to military arrangements is a very simple one, and it is distinctly enunciated in the following instructions to Governors, namely,—

"It is his duty (the Governor's), except in the case of invasion or assault by a foreign enemy, to issue to the officer in command of Her Majesty's forces within the Colony, orders for the march and distribution of troops, for the formation and march of detachments and escorts, and, generally, for such military service as the safety and welfare of the Colony may appear to him to require," but that "all the military details regarding such distribution, and the manner in which the detachments shall be formed and composed, rest with the military officer, who is responsible that they are conformable in every respect to the instructions issued to him by the Governor."

I am not aware that I have in the least degree deviated from these instructions, certainly I had no intention of doing so; but as your Excellency entertains a different view, and has expressed considerable dissatisfaction at such supposed deviation, I have to request you will be good enough to furnish me with a statement of the particulars in which you think I have exceeded my proper sphere of action, in order that I may at once submit the same to competent authority, and that any similar mistake or misunderstanding may be obviated in future.

It is essential to a cordial co-operation between the chief civil and military authority in

public matters, as well as to an harmonious intercourse in private, that there should be no doubtful or debatable ground as to the relative position or duties of each.

I can only say for myself, that it is my earnest desire to preserve the most friendly and cordial intercourse with your Excellency, both publicly and privately.

I have, &c.

His Excellency Major General O'Connor, C.B., &c. &c. &c.

(signed) *E. Eyre.*

Enclosure 16, in No. 1.

(Jamaica Command.)

Head-Quarter House, Kingston,
21 October 1865.

Sir,

I HAVE the honour to acknowledge your Excellency's letter of this day's date, referring to our interview yesterday, when "I asserted in the presence of Lieutenant Colonel Elkington, that in sending Her Majesty's troopship 'Urgent' to Barbados for additional troops for this Colony, you had exceeded your authority as Governor, and interfered with that of myself as General commanding Her Majesty's troops in the Jamaica command."

It seems to me to have escaped your Excellency's recollection that I added, "without communicating with or consulting me."

For either of these there was ample time, as the "Urgent" anchored at Port Royal early on Sunday morning, 15th instant, to coal for the voyage, and did not depart until the following evening.

Your Excellency's Despatch might have been left open for my perusal and opinion, considering I was the principal person concerned, but, on the contrary, I was permitted to remain in total ignorance of the movements and destination of the ship, sent expressly here to convey troops under my immediate command; and without any reference to me, my plans, and views, additional troops were to be poured in upon me, whether required or not, for whose reception and accommodation considerable preparations had to be made.

I entirely coincide in your Excellency's views "of our relative positions with regard to military arrangements" distinctly laid down in Her Majesty's and Colonial Regulations, "Instructions for Officers administering the Government of Colonies and Settlements Abroad."

Permit me to observe, that had you adhered to the paragraph of the instructions quoted in your letter, and "issued to the officer in command of Her Majesty's forces within the Colony, orders for the marching and distribution of them, or respecting any other military service, as the safety or welfare of the Colony may render necessary," and favoured me, by the commander of the "Urgent," with your orders, leaving to the "officer in command of Her Majesty's forces to carry all such matters into execution," who is responsible, not as your Excellency states "that they are conformable in every respect to the instructions issued to him by the Governor," but "he alone will be responsible to Her Majesty for the prompt and efficient performance of any such service in its details." Had you adopted this course, I would have carried into effect an arrangement already made with Lieutenant Colonel Elkington, Acting Deputy Adjutant General, for sending the "Urgent," hourly expected, direct to Nassau for all the available officers and men, with the head-quarters of the 1st West India Regiment, and the mail steamer "Plantagenet," hired and placed at my disposal by your Executive Committee, who consulted me on this occasion and in every other difficulty during your absence, to Honduras for Lieutenant Colonel Hill, an officer of long and well tried service in African warfare, and the 2nd West India Regiment, a prompt measure, saving time and expenditure every day, nay, hour of the former, of vital consequence in the present precarious aspect of affairs, and not dispatched the "Urgent" to a distant and distinct command, Barbados, to fetch from thence European troops, which very nearly 40 years of tropical service convinces me are not so enduring as African soldiers, whose constitutions, nature, and habits calculate them to suffer less than Europeans when exposed to the sun, night dews, and marches, such as Colonel Hobbs has made with the 2nd Battalion, 6th Royals, for 13 hours under drenching rain.

The excitement over, and the field abandoned, our hospitals may be filled with sick soldiers, many of them to be sent home in a few weeks as invalids.

Such was, and is, my reason for considering that you ought not to have sent the "Urgent" to Barbados, or indeed to any other station, without communicating or consulting with me.

Your frank acknowledgment "of my prompt and cordial co-operation from the commencement of this unfortunate outbreak up to the present time," is nothing more or less than what I am entitled to expect from your candour as a Governor and a gent eman, and no misapprehension now or hereafter can "disturb that good understanding between us," or prevent me performing my duty for the public interests.

I am

I am as fully aware as your Excellency that it is essential to a cordial co-operation between the chief civil and military authorities in public matters, that "there should be no doubtful or debatable ground as to the relative position or duties of each," and I reciprocate your "earnest desire to preserve the most friendly intercourse" with your Excellency.

I have, &c.

His Excellency Governor Eyre,
&c. &c. &c.

(signed) *L. Smyth O'Connor,*
Major General Commanding the Forces.

— No. 2. —

The Military Secretary to Major General *O'Connor.*

Sir, Horse Guards, 21 November 1865.

I AM directed to acknowledge the receipt of your Despatch of the 24th ultimo, and its enclosures, reporting for the information of the Field Marshal Commanding in Chief, the measures you had adopted for suppressing a rebellion which broke out among the native inhabitants at Morant Bay, St. Thomas'-in-the-East, Jamaica, on the 11th idem, and which has been attended by a most barbarous massacre of several influential European and coloured inhabitants.

In the present state of affairs it is in his Royal Highness's opinion premature to attempt to form a judgment as to the expediency of the measures which have been adopted, the details connected therewith being insufficient for more than a superficial reviewer; meantime, however, I am to express to you his Royal Highness's gratification at finding from the perusal of your report and its accompaniments, that the conduct of Brigadier General Nelson, and the officers and troops under his command, engaged in the rebellious district, has met with your approval.

I have, &c.

Major General O'Connor, C.B.,
Commanding the Troops, Jamaica.

(signed) *W. F. Forster.*

— No. 3. —

Major General *O'Connor* to the Military Secretary.

(Jamaica Command.)

Sir, Head-Quarters, 21 November 1865.

I HAVE the honour to transmit for the information of his Royal Highness the Field Marshal Commanding in Chief, a Despatch from Brigadier General Nelson, Deputy Adjutant General, lately commanding the field force against the rebels, St. Thomas'-in-the-East, Jamaica.

I fully endorse this clear, concise, and faithful report of the services performed by each and every officer in the different branches, military and naval, under the command of the brigadier.

Having especially mentioned in former despatches the valuable assistance afforded me by General Nelson, judiciously, promptly, and efficiently carrying out my orders, it would be superfluous to add more than that it is my conviction a dangerous and wide spread insurrection, involving the loss of many valuable lives, and destruction of property, was checked and crushed through the cool determined courage, practical sound judgment, and unwearied exertions of Brigadier General Nelson.

In conclusion, I cannot deprive myself of the pleasure of recording my entire satisfaction at the admirable manner Lieutenant Colonel Elkington, 2/6th Royal Regiment, has performed the responsible duties which have fallen to his lot as Acting Deputy Adjutant General, and General Superintendent of all staff duties.

In my letter to you, 21st ultimo, I fully recorded my opinion of this officer.

I have, &c.

The Military Secretary,
&c. &c. &c.
Horse Guards.

(signed) *L. Smyth O'Connor,*
Major General Commanding the Forces.

Enclosure 1, in No. 3.

Head-Quarters, Kingston, Jamaica,
20 November 1865.

Sir,

My duties as Brigadier General Commanding the field force employed to quell the rebellion, in the eastern portion of this island, having this day terminated, in consequence of the efforts made by the troops under my command to suppress the same having been crowned with success, and having, in accordance with your orders, established "posts" at the different places enumerated in the margin, and withdrawn all troops in excess, so as to admit of their joining respectively their head quarters.

Morant Bay, Manchioneal, Golden Grove, Port Antonio and Bath, occupied by Maroons.

I have the honour to report my return in order to resume the duties of Deputy Adjutant General to the forces under your command, and at the same time I feel it my bounden duty to record, and bring to your notice, the admirable conduct of the troops on all occasions, including naval brigade and volunteers, both in the field and in quarters.

The duties performed were often of a most harassing and arduous nature, rendered the more so from the heavy tropical rains, thereby causing the rivers to be so swollen as to render their passage difficult, even dangerous.

This and all other operations against the rebels I have had the honour at different dates to communicate to you; I therefore need not enter into further details.

It now becomes my pleasing duty to speak of the officers it has been my peculiar good fortune to have had under my command.

Captain Hole, 2/6th Royal Regiment, commanding detachment Manchioneal by his various movements from that post into the neighbouring country, inflicted severe punishment on the rebels, and by his efforts and excellent arrangements the country around has been comparatively tranquilised.

I have much to thank this officer for, as I was obliged to give much discretionary power, in the exercise of which he has proved himself to be an officer in whom the greatest reliance can be placed. As I before reported, he is not only an able officer, but an officer possessed of sound sense and judgment—invaluable qualifications when power is intrusted by the officer commanding a force.

Captain Luke, 1st West India Regiment, commanding detachment Port Antonio, preformed all duties intrusted to him with zeal and judgment. I must desire particularly to recall to your recollection the services performed by this officer, ably assisted by Captain Ross and Ensign Cullen of the same regiment, on the 14th October, when making a march through the rebel district of Plantation Garden and Golden Grove, whereby, no less than 80 refugees of all ranks and classes were rescued and brought in.

Had it not been for the rapidity of movement of the troops under Captain Luke, it is probable many would have fallen victims to the miscreant rebels who were prowling about in numbers, and who fired on a detached party under Captain Ross.

Lieutenant Oxley, R.N., commanding the portion of naval brigade detached to Easington, performed all duties assigned to him, with great zeal and promptitude of action; in fact, very responsible duties devolved on this part of the forces, and it was impossible to carry them out in a more efficient manner than was done by Lieutenant Oxley.

Lieutenant Errington, R.N., in command of the troops at Morant Bay, though not actively employed in the field, did his duty to my entire satisfaction, and very arduous it was; it being the head-quarters of the field force, thereby involving the usual difficulty of keeping order in a camp, into which continuous gangs of rebel prisoners were coming.

The Royal Artillery detachments at Port Antonio and Morant Bay, under command of Lieutenants Nash and Jones respectively, maintained the high character of this distinguished branch of the service.

The Maroons under the skilful leading of Colonel the Honourable A. G. Fyfe, contributed greatly towards the suppression of the rebellion; the peculiar nature of this force permitted of the mountains being searched, and with the Maroons rests the honour and credit of capturing the principal ringleader of the rebellion, Paul Bogle.

I feel great diffidence in touching on the subject of the services rendered by Her Majesty's Navy; but I cannot deprive myself of the pleasure, even if transgressing, of offering my humble meed of thanks to Captain De Horsey, Her Majesty's ship "Wolverine," the senior naval officer on the station, during the active operations of the field force under my command. Had he not cordially co-operated with me, whatever the final results might have been, so speedy a termination of the rebellion could not have been effected; much, indeed everything, depended on the celerity of our movements; and every required arrangement was carried out by Her Majesty's ship "Wolverine," Captain De Horsey, with the greatest zeal and promptitude.

I trust Captain De Horsey will do me the favour of accepting my most cordial thanks for the invaluable services rendered.

"Onyx" was, after a short time, relieved by "Nettle."

Lieutenant Herbert Brand, R.N., commanding Her Majesty's gun-boats "Onyx" and "Nettle" respectively, has been unceasing in the performance of his duties; not only has he done much good service in the gun-boats, by carrying detachments of troops from station to station as I required, but on shore, as president of courts martial, he has aided me considerably.

To

To this officer, Lieutenant Brand, I feel myself deeply indebted, and I trust his meritorious services may be brought to the notice of the authorities of his own service.

Colonel Lewis, St. Catherine's Militia, and Captain Espent, Kingston Militia, took the field at the same time as myself; the former remained until domestic affliction induced me to grant him leave of absence; and the latter until his duties as a member of the legislature caused me to dispense with his services. I must add, Captain Espent reluctantly coincided in my view of the expediency of his attending to his civil duties.

These officers rendered very able and zealous services, and the Colony owes them a deep debt of gratitude for having sacrificed their home avocations in order to take part in active operations with a field force.

His Excellency the Governor and Captain General, at great personal inconvenience, was pleased to place at my disposal his aide-de-camp and military secretary, Colonel Hunt; being an officer of the regular forces, I derived the greatest benefit therefrom, and by his untiring energy and zeal, Colonel Hunt deserves infinite praise at my hands; and I much regretted losing his services on the departure of his Excellency the Governor from the scene of operations.

The medical arrangements connected with the force were satisfactorily carried out by Assistant Surgeons Goodman and Terry, R.N., and Staff Assistant Surgeon Morris, Her Majesty's forces.

Provost Marshal Ramsay was unwearied in the performance of his duties, and which were of a very harassing and arduous description, and I trust they will be taken into consideration by the Colonial Government.

To each and all of the officers of military, naval, and volunteer force, which I had the honour to command, my fervent and everlasting thanks are due: all did their duty; and it is to the courage and determination of the combined forces the Colony is indebted for having had, in so short a time, a wide-spread rebellion effectually pulverised.

I now having, as briefly and concisely as possible, consistent with detail, recapitulated much which has been the subject of former despatches to yourself, crave permission to submit the names of the following officers to your most favourable notice:—

Captain Luke, 1st West India Regiment, commanding detachment, Port Antonio.

Captain Ross and Ensign Cullen, 1st West India Regiment, honourably mentioned by Captain Luke in a despatch to myself.

Captain Hole, 2/6th Royal Regiment, commanding detachment at Manchioneal.

Lieutenant Oxley, R.N., commanding detachment Easington.

Lieutenant O'Connor, Royal Marine Artillery, honourably mentioned by Lieutenant Oxley, R.N., in a despatch to myself.

Lieutenant Errington, R.N., commanding head-quarters camp, Morant Bay.

Lieutenant Brand, R.N., commanding Her Majesty's gunboats "Onyx" and "Nettle."

Colonel Hunt, Aide-de-Camp, Military Secretary to his Excellency the Governor.

Colonel the Honourabe A. G. Fyfe, commanding Maroons.

Colonel Lewis, St. Catherine's Militia.

Captain Espent, Kingston Militia.

My own personal staff, Lieutenant Adcock, 2/6th Royal Regiment, Aide-de-Camp, has rendered me throughout the greatest assistance; not only has he, with great credit, commanded a flying column which in a three days raid did excellent service, but he has had sole charge of the commissariat department. His duties have been multitudinous: all have been performed with great ability.

I therefore desire most particularly to commend this officer to your special notice.

I have, &c.
(signed) *A. A. Nelson,*
Brigadier General, Commanding Field Force, and
Deputy Adjutant General, Jamaica.

To Major General O'Connor, C.B., &c.
Commanding Forces, Jamaica.

— No. 4. —

Major General *O'Connor* to the Adjutant General.

(Discipline.)

My Lord, Jamaica, 21 November 1865.

RUMOURS being rife of cruelty having been practised in the execution of rebels at and in the neighbourhood of "Monklands," and anonymous letters being sent me, I considered it my duty to call on Colonel Hobbs, 2/6th Royal Regiment, the officer in command at Monklands, for explanation of the rumours.

I have now the honour to transmit copies of correspondence on the subject, with the view to your being pleased to lay the same before his Royal Highness the Field Marshal Commanding in Chief.

I have refrained from taking myself any steps in the matter, simply because I think, to have done so in the present critical and excited state of the Colony, consequences of a most serious nature would have followed.

I have, &c.
(signed) *L. Smyth O'Connor,*
Major General Commanding.

The Adjutant General,
&c. &c. &c.
Horse Guards.

Enclosure 1, in No. 4.

(Jamaica Command.)

Sir, Head-Quarter House, 7 November 1865.

It having been currently reported that you caused a rebel, named Arthur Wellington, to be tied to a tree, and made a mark for your soldiers to fire at, a distance of 450 yards, and 20 shots or more were expended before the wretched man was killed, I do myself the honour to request you will, without delay, state whether the said report is correct or not.

I have, &c.
(signed) *L. Smyth O'Connor,*
Major General.

Colonel Hobbs,
6th Royal Regiment.

Enclosure 2, in No. 4.

Sir, Newcastle, Jamaica, 9 November 1865.

In reply to your letter of the 7th instant, regarding the execution of that celebrated rebel and Obieman, Arthur Wellington, I have the honour to state that, on the day of his execution, having a large number of loaded rifles (which had been wet in the rivers the previous evening), the charges of which were about to be drawn, I directed a section of about 10 men, instead of discharging their rifles before cleaning, to fire a volley at this rebel, at a distance of 400 yards; they did so, and as the first round had not quite killed the man, some having missed, two or three men again fired, and shot him dead. Captain Field superintended the execution, and I do not consider there was any undue waste of ammunition on the occasion, as owing to the dampness of the powder the bullets must have fallen short.

I have, &c.
(signed) *T. Francis Hobbs,*
Colonel and Lieut.-Colonel,
Commanding 2nd Battalion, 6th Regiment.

Major General O'Connor,
Commanding Forces, Jamaica.

Enclosure 3, in No. 4.

Deputy Adjutant General's Office,
Sir, Kingston, 10 November 1865.

I am directed by the Major General Commanding to acknowledge the receipt of your letter of the 9th November in answer to a communication of his of 7th instant, calling upon you to state particulars relative to the execution of the rebel, Arthur Wellington, and I am further directed to request you will state distinctly whether the prisoner was tied to a tree and fired at, 400 yards or thereabouts, and was he struck in the neck by a ball from the rifle of a serjeant of the party and the prisoner kept in suspense, as it would appear from your letter the bullets must have fallen short. Captain Field superintending the execution, you will desire that officer to forward, through you, a most minute detail of the whole circumstances in connection with the execution of Arthur Wellington, the Major General being desirous of having this affair thoroughly investigated; for no doubt but a report of a serious nature will eventually reach the authorities in England, perhaps furnishing a matter of discussion in Parliament.

I have, &c.
(signed) *John Elkington,*
Lieutenant Colonel, D.A.G.

Colonel Hobbs,
6th Royal Regiment, Newcastle.

Enclosure 4, in No. 4.

(Arthur Wellington.)

Sir, Newcastle, 11 November 1865.

In reply to a communication from the Deputy Adjutant General's Office of the 10th November 1865, relative to the execution of a rebel, Arthur Wellington, I have the honour to state, that Colonel Hobbs, the night before the prisoner was executed, stated that he intended to test the power of the Enfield rifle at long ranges. The following day, at about 2 o'clock p.m. the prisoner was taken up a hill, a distance of 400 yards or thereabouts, and tied to a tree. The provost serjeant in charge of the prisoner acted as a marker, and signalled the seventh shot as having passed through the said rebel's throat, the ninth or tenth shot entered his heart, or thereabouts. I beg also to state that, as far as superintending the execution, I was in charge of the party, and carried out the commanding officer's instructions.

I have, &c.
(signed) *Spencer Field*,
Captain 2nd Battalion, 6th Royal Regiment.

Deputy Adjutant General,
Kingston.

Enclosure 5, in No. 4.

Sir, Newcastle, Jamaica, 12 November 1865.

In reply to your letter requesting further particulars regarding the execution of the celebrated rebel, Arthur Wellington, I have the honour to state that I am unable from personal observation to furnish any additional particulars regarding it. I directed a section of 10 men to discharge their rifles, which had got wet, at this man, who was placed at a distance of 400 yards with his back to a tree, whether tied to it or not I cannot say, of my own personal knowledge. Had some of the rifles not missed fire, death must have been instantaneous, and much quicker, and less cruel than hanging; he was placed on a hill, in order that every other prisoner and special constable should see the fate of a man who I described in my despatch as combining the three qualities of murderer, cannibal, and Obieman. No attempt was made to torture the man: my first letter explains, I think, fully, the reasons why the bullets fell short, viz., the powder being wet: many men who were shot at a distance of 40 yards lived longer than Arthur Wellington. If a copy of the report of this case is sent to me, I will most willingly give any particulars which will more than satisfy any Parliamentary inquiry. The time of execution was, I think, about 2 p.m. The men knelt at Mr. Patterson's barbicue; fired up hill. The sun being very powerful at the time, I withdrew, and Captain Field remained. I enclose his report, as it appears from your letter that the particulars of this execution are going to England. I now respectfully request that the informer be sworn, his name, and a copy of his depositions sent to me, as I do not undertake to give correct statements of minute particulars of every execution, not having had time to take notes of them, unless I see at once the statements of the person reporting it while fresh in my memory: nothing would afford me more pleasure than that every particular connected with my division, and the conduct of the officers and men under my command, were investigated before Parliament, feeling assured it would add lustre and renown to the British Army, and the 6th Royal Regiment in particular.

I have, &c.
(signed) *T. Francis Hobbs*,
Colonel and Lieutenant Colonel,
Commanding 2nd Battalion, 6th Foot.

The Deputy Adjutant General,
Kingston.

— No. 5. —

Major General *O'Connor* to the Military Secretary.

Sir, Jamaica, 23 November 1865.

Several individuals having complained to me, and made affidavits that their horses, mules, donkeys, and other chattels had been taken away by the soldiers, 2nd Battalion, 6th Royal Regiment, under the command of Colonel Hobbs, 2nd Battalion, 6th Royal Regiment, while engaged in suppressing the late rebellion in St. Thomas'-in-the-East,

I investigated the matter; and the correspondence which has ensued, I now do myself the honour to enclose for the consideration of his Royal Highness the Field Marshal Commanding in Chief.

I have, &c.
(signed) *L. Smyth O'Connor*,
Major General Commanding.

The Military Secretary,
&c. &c. &c.
Horse Guards.

Enclosure 1, in No. 5.

(Jamaica Command.)

Sir, Head Quarter House, 6 November 1865.

Mr. David Alvarenga, of Moncklands, and other parties having complained that the soldiers of the 2nd Battalion 6th Royals, under your command, while employed in the field plundered stores and seized upon clothing, books, mules, and cattle, taking them away; and also that an auction was held at Newcastle of the plundered property, the sale of which realised a sum of 150 *l.* to 170 *l.* and upwards,

I have the honour to request you will immediately afford me a full explanation of the foregoing accusation.

I have, &c.
(signed) *L. Smyth O'Connor,*
Major General.

Colonel Hobbs,
2nd Battalion, 6th Royal Regiment,
Newcastle.

Enclosure 2, in No. 5.

(Mr. David Alvarenga's Statement.)

On Thursday, 12th October 1865, the rebels came to me, and demanded of me whether I would join them or not. For the safety of my life I told them yes, and they left me for Moncklands. On the next morning they held out threats to kill me should I refuse to go with them to Stoney Gut. I had then to escape for my life to town. A few days after they entered my house, and compelled my servants to give up possession, or they would kill them or destroy the house.

The rebels took possession, and hid some stolen goods therein; the same being found there by the soldiers under Colonel Hobbs, 6th Royal Regiment, were taken away, and all my clothing, books, &c., with my mule and saddle; my coffee is also picked from the trees, and my property taken away.

6 November 1865. (signed) *David Alvarenga.*

Enclosure 3, in No. 5.

(Captured Stock.)

Sir, Newcastle, Jamaica, 9 November 1865.

In reply to your letter of the 6th instant, which I found on my return here last night, I have the honour to state, first, that Mr. David Alvarenga, if at present at large, is, I believe, a rebel, and that his statement is untrue. It was in this very man's house that the goods stolen from Mr. Patterson's store were found; that his dwelling-house stands within a few yards of the chapel where Paul Bogle swore in his men, in Mount Lebanus; that his house was found by the troops broken into and gutted; and that I saw with my own eyes piles of that seditious paper, "The Watchman," in it, and abundant proof of his being a rebel, and trust he may be sent here for trial.

With regard to the second part of the letter, regarding captured animals, &c., I can give the most ample and fullest explanation.

It is quite true that the sum realised by the sale of these animals exceeds 170 *l.*, although I am unable at present to furnish a correct account until all the money has been collected and sundry claims settled.

During our several excursions into rebel fastnesses from day to day, sundry ponies, donkeys, and a very few mules were captured, as reported by me in my several despatches from time to time.

On some of these I mounted a few men; numbers of them, however, broke or strayed away; many were let loose in the night by special constables and others, and some few claimed by people "said to be loyal;" the residue, amounting to 39, were finally brought to Newcastle, having previously allowed each officer with me to select one animal, and Captain Field two.

On my return from Moncklands, one of the first things I did was to call upon the military secretary in his office, and request him to find out for me, without delay, your wishes regarding these prizes, as there was no means of keeping them at Newcastle, three having died, many dying and straying away. I received no official answer from Captain Stirke, but a private intimation to dispose of them; accordingly I allowed six days to elapse, in order to give any loyal subject an opportunity of claiming their stock, being most

most anxious to be on the safe side. I also spoke to Lieutenant Colonel Elkington, the Deputy Adjutant General, on the matter, and asked whether I should write for instructions or dispose of them for the benefit of the men. He advised the latter course, and gave me to understand that you did not wish the matter referred; and on the 2nd November the unclaimed animals were sold, not by auction, but privately, by Captain Harmond and Lieutenant Hall, 6th; Mr. Lazarus and the serjeants of the regiment being the chief purchasers.

The price of all that have been paid for is in the paymaster's hands. It is my intention, unless I receive orders to the contrary, to allow this money to remain one month untouched, in order to defray all claims that may come in, and to divide the residue between the non-commissioned officers and men, as may be decided upon by a committee of the officers who accompanied me.

I have, &c.
(signed) *T. Francis Hobbs,*
Colonel and Lieutenant Colonel,
Commanding 2nd Battalion 6th Regiment.

Major General O'Connor, C.B.,
Commanding the Troops,
Jamaica, &c.

Enclosure 4, in No. 5.

(Jamaica Command.)

Sir, Head-Quarters, 13 November 1865.

After a careful perusal and grave consideration of your letter of 9th inst., purporting to give "the most ample and fullest explanation" regarding captured animals and other matters contained in my communication to you, 6th inst., I have now the honour to convey, for your information and guidance, my opinion as follows.

I cannot admit, on your bare assertion, that Mr. Alvarenga, the claimant of a mule and other property plundered from his premises, "if at present at large, is a rebel."

Mr. Alvarenga has been and is in constant communication with the custos of Kingston, who gave me a very good character of him, and three or four days ago Mr. Alvarenga obtained a pass for one of his servants to proceed to Moncklands to identify a rebel.

You had no authority to have a "sale" of the several animals collected by your division when on active service without previous reference to me, and obtaining my sanction as the Major General Commanding.

In one of your despatches you mentioned something about mounting your officers on horses, but I cannot find a report "of the residue, 39, finally brought to Newcastle."

An official application ought to have been addressed by you to me, and not a mere verbal message to Captain Stirke, the Acting Military Secretary, who had no authority to give you any instructions in the matter, and the "six days you allowed to elapse" afforded ample time to seek for and receive my official reply.

Your intention "to allow the money received for the sale of the captured animals exceeding 170 *l.* to remain one month untouched in order to defray all claims that may come in, and to divide the residue between the non-commissioned officers and men, as may be decided upon by a committee of the officers who accompanied you," is assuming a power that I, as Major General Commanding, do not possess, and contrary to the rules of the civil and military service.

The proceeds on the sale of captured property clearly accounted for must be paid into the military chest until orders are received from the Secretary of State for War for its disposal, and a Bill passed by the Legislature this session provides "that all forfeitable property, real and personal, of persons adjudged guilty of treason or felony, should be placed at the disposal," not of you or any other private individual, but "of the Crown."

I have therefore to request you will be good enough to furnish me with a list of the 39 animals, ponies, donkies, mules, brought to Newcastle and sold by Captain Harmond and Lieutenant Hall, 6th Regiment, to Mr. Lazarus, and the serjeants of the regiment, with an account of the sale of each animal.

I cannot recognise your right to allow each officer to select "one animal" and "Captain Field two" from property clearly belonging to the Crown, therefore after defraying all claims "that may come in," and furnishing me with a list, you will cause to have paid into the military chest the balance realised by sale of the forfeited property.

I have, &c.
(signed) *L. Smyth O'Connor,*
Major General.

Colonel Hobbs, Commander,
2nd Battalion 6th Regiment, Newcastle.

Enclosure 5, in No. 5.

CAPTURED STOCK.

Sir, Newcastle, Jamaica, 16 November 1865.

I HAVE the honour to state in reply to your letter of the 13th instant, that, prior to the receipt of your letter, I had directed the paymaster to lodge the sum of 200 *l.* in the Colonial Bank to the credit of the Crown; your former letter seeming to cast a doubt upon the powers I believed I possessed under martial law.

From a careful perusal of your letter, I am of opinion that my former letter was misunderstood, as the whole of the proceedings of sale and distribution of money, &c., was, as a matter of course, pending your approval, but the time had not come for writing about the distribution of the money to the soldiers to replace their lost clothing, as it was not at the time collected.

My application to the assistant military secretary was as official as it was possible to be at that time.

I called at his office and requested him to ask you officially what course I was to adopt, adding, that I had not time to write; he made a memo. of it, and the following day wrote to me a letter, marked private, inside in an official cover, and purporting to contain your instructions (copy enclosed); it speaks for itself.

The Deputy Adjutant General told me, in the most distinct language, not to write to you, as you did not want to be written to about it, or words to that effect.

The officers' gardens, and the cantonment generally, were being destroyed by these animals. I had no possible interest in either keeping them or parting with them, they were dying from starvation. The officers only retain the use of one* animal each, in like manner pending your approval, and I now request instructions as to their disposal, as well as three others, two of which tired on the way, and have since been brought here, having been sent in by Mr. Josephs, which belonged to dead rebels, and one given by me to a native boy, named Anderson, as a reward for his extraordinary exertions and invaluable services in pointing out rebels, and acting as an invaluable guide in St. Thomas in the East, having had no money to reward him with. This boy I mentioned in my despatches before, and I trust you will endeavour to get him suitably rewarded.

* Captain Field did not claim the use of a baggage animal for his company.

I have acted in this matter with the full concurrence of the officers of the regiment, and to the best of my judgment, and can only say that the responsibility of the sale of the animals rests on Captain Stirke.

As regards Mr. Alvarenga, a Baptist schoolmaster, I never saw him, he had fled from his house; I can only refer to my former letter, and, in proof of my opinion beg to enclose the statement of others.

The money is all clearly accounted for, and a list of animals, &c., enclosed.

During martial law I considered that all other laws are suspended, and that I, as an officer commanding a division in the field, had a perfect right to order these animals, found on rebel's property to be shot; as, however, I appear to have incurred your displeasure by capturing these animals, and, as a most important point of law is involved, I now respectfully request that copies of the whole of the correspondence in this case may be referred to the Judge Advocate General and the Attorney General, in Jamaica, for their opinion on the following points:—

1st. What are the powers of a colonel of division under martial law?

2nd. Can a commander order the destruction of rebel stock?

3rd. If he can order their destruction, can he take them alive, and dispose of them for the use of the troops, either to be used as food or beasts of burden, or if unable to feed them, convert them into money?

Never having before been engaged in similar service, I find it exceedingly difficult to know what my position was and is; my only wish in this, as in all other cases, is to do what is right.

I have, &c.
(signed) *T. F. Hobbs,*
Colonel and Lieutenant,
Commanding 2nd Battalion 6th Regiment.

Major General O'Connor,
Commanding Forces, Jamaica.

Enclosure 6, in No. 5.

List of Captured Horses, Mules, and Donkeys, by the Central Field Force.

Number and Description of each Animal Sold.	Name of Purchaser.	Amount Sold for. £.	s.	d.
Four mules and two horses, the lot	Mr. Lazarus	48	–	–
One grey horse	Drummer Standen	5	–	–
One grey colt	Mr. Hyde	3	–	–
One bay horse	Serjeant Taylor	4	–	–
One chesnut horse	„ Cleary	5	–	–
One bay colt	Private Delaney	1	–	–
One bay mare *	Serjeant Fanghnam	3	–	–
One mule	Mr. Willis	8	–	–
One mule	Mr. Murray	7	–	–
One grey horse	Drummer Archer	4	–	–
One bay horse	Serjeant Tippetts	4	10	–
One colt	„ March	2	–	–
One colt	„ Finghnam	1	10	–
One grey mare	Mr. Lazarus	4	–	–
One bay horse	„ Fyfe	3	–	–
One mule	„ Bolton	6	–	–
One grey mare	Serjeant Conolly	3	10	–
One bay colt *	Mr. Le Franc	2	10	–
One bay horse	Serjeant Conolly	2	10	–
One mule	Mr. Lazarus	7	10	–
One bay horse	„ Turner	1	10	–
One mule	„ Fielding	–	10	–
One grey horse	„ Lazarus	3	10	–
One bay mare	„ Conolly	4	–	–
One bay horse	„ Lazarus	3	–	–
One mare and mule colt	„ Bolton	4	10	–
One bay horse	„ Savage	2	–	–
One grey mule	Private Kirby	1	–	–
One grey horse	Mr. Lazarus	2	10	–
One dark grey horse	„ Lazarus	2	10	–
One grey mare	„ Bolton	5	–	–
One roan horse	Private Jones	–	10	–
One mule	Mr. Night	6	–	–
One donkey	Lieutenant Roworth	1	–	–
One „	Mr. Bolton	–	15	–
One „	Private Hunt	1	–	–
One „	„ Stokes	1	–	–
One mule	Captain Field	1	–	–
One donkey	Serjeant Thompson	1	–	–
One „	„ Conolly	–	15	–
One „	Serjeant Major Stapeley	1	–	–
One „	Mr. Buckley	1	–	–
Two horses	„ Conolly	5	–	–
	Total £.	184	10	–

	£.	s.	d.
Cash received for stock sold	184	10	–
Ditto ditto for coffee	27	16	–
	212	6	–
Deduct—For Animals claimed,* one at 3 *l.*, and one at 2 *l.* 10 *s.*	5	10	–
	206	16	–
Cash to be lodged in Commissariat chest	200	–	–
Balance remaining to meet future claims £.	6	16	–

(signed) *J. Harmond*, Captain 2nd Battalion 6th Regiment.
A. C. Hall, Lieutenant 2nd Battalion 6th Regiment.

Newcastle, 16 November 1865.

Enclosure 7, in No. 5.

Deputy Adjutant General's Office, Kingston,
21 November 1865.

Captured stock.

Sir,

Having had the honour to submit to the Major General Commanding your letter of 16th instant, with correspondence attached thereto, subject per margin, I have it in command to observe, that with respect to your view of your letter, 9th instant, being misunderstood, on careful re-perusal, the following paragraph, "it is my intention, unless I receive orders to the contrary, to allow this money to remain one month untouched, in order to defray all claims that may come in, and to divide the residue between the non-commissioned officers and men, it may be decided upon by a committee of the officers who accompanied me."

It is clearly evident that you quite ignored the Major General's authority at the outset; for the first intimation received by him was, that a sale had actually taken place; thus your supposition of being misunderstood cannot be admitted.

With respect to your considering the note of the Acting Assistant Military Secretary as authorising your proceedings, I am to acquaint you that private notes cannot be recognised as public documents, except under very peculiar circumstances, and such did not exist in the case under discussion; the same remarks refer to the Deputy Adjutant General, and verbal communications cannot always be depended upon.

All horses selected under your sanction, not already sold, to be disposed of for their full value, and the proceeds paid into the military chest.

Mr. Josephs and Boy Anderson are included, and must pay for or deliver up the animals.

With respect to your having acted in the matter with the full concurrence of the officers of the regiment, it is to be regretted you did not seek the views of the legitimate authority "Major General Commanding," and not consult junior officers under your command, as was done.

The Major General is quite prepared to accord you all credit for having acted for the best, but he cannot comprehend the responsibility of the sale rests upon Captain Stirke, who was constantly employed on staff duty at Kingston.

The question of Mr. Alvarenga being a rebel or not, and the several documents from non-commissioned officers and privates of the regiment under your command, is not "the question;" it is, that property, furniture, clothes, books, &c., were taken by the soldiers under your command, and portions conveyed to Newcastle; and Mr. Alvarenga asserts some of his property is now at the cantonment.

I am to refer you to paragraph 62, page 287, Queen's Regulations, as bearing on above. You are correct in your assumption of martial law over-riding all other laws, but it was the will of the Major General and not your own, which should have been acted on; you had not the power, or rather authority, to order animals, even if the property of rebels, which merged into the property of the Crown, to be preserved for distribution without authority from home; on this head, the opinion of the Major General was conveyed to you in a letter of 13th November, since which date the enclosed Bill to provide for forfeiture of estates, &c., of persons, guilty of treason, or felony in the late rebellion has been passed, fully bearing out the Major General's opinion.

As regards your desire of the opinion of the Judge Advocate General, and the Attorney General, Jamaica, on the three points named in your letter under reply, I am commanded to observe:

1st. That you were in command of a detachment of your regiment, without other troops. For argument sake, admitting you had command of a division, the power of a colonel commanding a division to carry out the orders of his superior officer, and to rigidly observe the instructions, are laid down in Queen's Regulations, and other orders of the army.

2nd. A commander cannot order the destruction of rebel property, which becomes the property forfeited to the Crown.

3rd. Answered in part by No. 2. If driven to necessity in food, and the troops suffer from famine be proved, this may justify rebel stock being used; if fed and disposed of, proceeds must be lodged in the military chest for the decision of the Crown.

Not questioning the legal acumen of the Attorney General of Jamaica, the Major General

General declines consulting the opinion of the learned gentleman on a point of military law, putting Government to the unnecessary expense of a heavy fee, for the Major General could not seek advice in *formâ pauperis.*

The Major General gives every permissible credit to yourself for a wish to do what is right, and commends the correct and laudable desire evinced by you for acquiring information, and he has at all times been well disposed to afford you every advice and assistance, whenever such was sought.

I have, &c.
(signed) *A. A. Nelson,*
Deputy Adjutant General.

P.S.—The Major General desires this letter may be considered as closing the correspondence *in re* "captured stock."

A. A. N.

Colonel Hobbs,
Commanding 2nd Battalion 6th Royal Regiment,
Newcastle.

JAMAICA.

COPY or EXTRACTS of CORRESPONDENCE between the Horse Guards and General *O'Connor* on the CONDUCT of MILITARY OFFICERS during the recent deplorable OCCURRENCES in *Jamaica*.

(*Mr. Charles Gilpin.*)

Ordered, by The House of Commons, *to be Printed,*
12 *February* 1867.

Under 4 *oz.*

JAMAICA.

RETURN to an Address of the Honourable The House of Commons, dated 22 March 1867;—*for*,

"COPY of the PROCEEDINGS of the COURTS MARTIAL recently held in *Jamaica* upon Ensign *Cullen* and Assistant-Surgeon *Morris* of Her Majesty's Service, including the Findings of the Courts, and the Nature of the Sentences, if any, awarded to the Accused."

War Office, 29 March 1867.

J. S. PAKINGTON.

(*Mr. Gilpin.*)

Ordered, by The House of Commons, *to be Printed*, 2 *April* 1867.

Proceedings of a General Court Martial, held on Ensign Cullen - - - p. 1

Proceedings of a General Court Martial, held on Staff Assistant Surgeon Henry Morris - - - - - - - - - - - - - - p. 133

PROCEEDINGS of a GENERAL COURT-MARTIAL, held on Ensign *Cullen* 1st West India Regiment, assembled at Kingston, Jamaica.

LIST OF WITNESSES FOR PROSECUTION.

		Questions	Page
1. Honourable E. Jordan, C. B.	coloured	14 to 18	2
2. Captain Hole, 2nd Battalion, 6th Regiment	white	19 „ 31	2
3. H. Clark, Clerk of Works, R. E.	white	32 „ 45	3
„ „ „ recalled		1976	95
4. Peter Phillips	black	46 „ 109	5
5. Cyphus Wills	black	110 „ 155	7
6. George Colson	black	156 „ 205	8
7. Richard Francis	black	206 „ 224	10
8. Samuel Bryan	coloured	225 „ 286	10
9. Isaac Cornwall	black	287 „ 297	13
10. Cecilia Robinson	black	298 „ 354	14
11. Abraham G. Donaldson	black	355 „ 439	17
12. Robert Speed	black	440 „ 494	19
13. John Hamilton	black	495 „ 526	22
14. Sophia Bartley	black	527 „ 536	23
15. George Grant Manning	coloured	537 „ 655	23
16. John Anderson	coloured	656 „ 704	30
17. Thomas Clark	black	705 „ 739	33
18. Eliza Phillips	black	740 „ 779	34
19. John Fleming Duany	coloured	780 „ 830	35
20. Thomas Wedderburn	black	831 „ 864	38
21. Harriett Warren	black	865 „ 892	39
22. Richard Taylor	black	893 „ 921	40
23. Zachariah Bayley	black	922 „ 928	41
24. Charles Robinson	black	929 „ 943	41
25. Nathaniel Wilkie	black	944 „ 958	42
26. William Bartley	black	959 „ 981	42
27. William Huntingdon	black	982 „ 989	43
28. Assistant Surgeon Kerr, 2nd Battalion, 6th Regiment	white	990 „ 1022	44
„ „ recalled		1967 „ 1975	94
29. Doctor Fiddes	white	1977 „ 1982	95
30. Doctor Scott	coloured	1983 „ 1984	96

LIST OF WITNESSES FOR DEFENCE.

1. James Harrison	white	1023 to 1055	46
„ recalled		1107 „ 1118	50
2. Alexander Chisholm	white	1056 „ 1106	48
3. Charles H. M'Dermott	white	1119 „ 1155	51
4. John Sinclair	white	1156 „ 1193	53
5. Romeo W. Drysdale	coloured	1194 „ 1215	55
6. Alfred G. Berry	white	1216 „ 1251	55
7. Richard M. Wilson	white	1252 „ 1257	57
8. Joseph Wood	coloured	1258 „ 1269	57
„ recalled		1755 „ 1757	79

		Questions	Page
9. James A. Fowles	white	1270 to 1281	58
10. William G. Astwood	white	1282 „ 1315	58
11. Robert S. Brass	white	1316 „ 1333	60
12. John H. Davis	white	1334 „ 1338	61
13. Edward W. Lewis	white	1339 „ 1362	62
14. Serjeant O'Connor, 1st West India Regiment	black	1363 „ 1408	64
15. Corporal Hunter, 1st West India Regiment	black	1409 „ 1465	65
16. Private Wolstenholme, 2nd Battalion, 6th Regiment	white	1466 „ 1524	67
17. Private Leslie, 1st West India Regiment	coloured	1525 „ 1549	69
18. Corporal Maddix, 1st West India Regiment	white	1550 „ 1569	70
19. Private Gordon, 1st West India Regiment	black	1570 „ 1594	71
20. Private Blyth, 1st West India Regiment	black	1595 „ 1611	72
21. W. O. Lofthouse	white	1612 „ 1636	72
22. Honourable W. Hosack	white	1637 „ 1640	74
23. Captain Ross, 1st West India Regiment	white	1641 „ 1650	75
24. Lance-corporal Bedford, 2nd Battalion, 6th Regiment	white	1651 „ 1682	75
25. J. R. Watson	white	1683 „ 1711	76
26. Private Barnes, 2nd Battalion, 6th Regiment	white	1712 „ 1733	77
27. Private Cox, 2nd Battalion, 6th Regiment	white	1734 „ 1753	78
28. Lieutenant Ballantine, 1st West India Regiment	white	1754	79
29. Doctor Manners	white	1758 „ 1810	79
30. Staff Surgeon Street	white	1811 „ 1824	82
31. Staff Assistant Surgeon Morris	white	1825 „ 1838	83
„ „ „ recalled		1890	89
32. Staff Surgeon Dunlop	white	1839 „ 1863	84
33. Honourable Doctor Bowerbank	white	1864 „ 1908	85
34. Doctor Anderson	white	1909 „ 1951	90
35. Private Cheetham, Army Hospital Corps	white	1952 „ 1954	93
36. Private Broder, Army Hospital Corps	white	1955	93
37. Herbert F. Orgill	white	1956 „ 1966	93

APPENDIX.

LIST OF DOCUMENTS ATTACHED TO THE PROCEEDINGS.

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4. Order from Brigadier General Nelson to Captain Hole, 2nd Battalion, 6th Regiment (Prosecution)	„ (D.)	112
5. Plan of Grounds near Duckenfield Post Office (Prosecution)	„ (E.)	facing p. 112
6. Elevation and Ground Plan of Post Office Building	„ (F.)	facing p. 112
7. Sketch from Post Office, includes blacksmith's shop, logwood hedge and growing bamboos (Prosecution)	„ (G.)	facing p. 112
8. Prisoner's Opening Address for Defence	„ (H.)	112
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PROCEEDINGS of a GENERAL COURT MARTIAL held on Ensign *Cullen*, 1st West India Regiment. Assembled at Kingston, Jamaica, on 2nd October 1866. Concluded, 4th December 1866.

PROCEEDINGS of a GENERAL COURT MARTIAL held at Up-Park Camp, Kingston, Jamaica, on the 2nd day of October 1866, in pursuance of an Order of Major General *O'Connor*, C.B., Commanding Her Majesty's Forces in Jamaica and its Dependencies, dated the 28th day of September 1866.

President:

Colonel FARREN, C.B., Depôt Battalion.

Members:

1. Major Williamson - -	48th Regiment.	5. Captain Barstow - -	89th Regiment.
2. Brevet Major Campbell,	71st „	6. Captain Seton - -	102nd „
3. Captain Walters - -	44th „	7. Captain Oliver - -	66th „
4. Captain Day - - -	28th „	8. Captain Ready - -	66th „

Captain MACLEAN, Rifle Brigade, Deputy Judge Advocate.

FIRST DAY, 2nd October 1866.

AT 11.30 A.M., the Court opens.

Ensign FRANCIS JAMES CULLEN, 1st West India Regiment, appears a Prisoner before the Court.

THE order for the assembly of the court martial, and the warrants appointing the President and Deputy Judge Advocate, are read. 2 October 1866.

The names of the President and members are read over, and they severally answer to their names, in the hearing of the prisoner.

1. *Question to the Prisoner.*] Do you object to being tried by the President or by any of the officers whose names you have heard read over?—*Answer.*] I do not.

The President, members, and Deputy Judge Advocate are duly sworn.

The Court proceeds to the trial of Ensign Francis James Cullen, 1st West India Regiment, on the following

CHARGE.

"For scandalous conduct, unbecoming the character of an officer and a gentleman, in having, on the 21st October 1865, in the county of Surrey, in the island of Jamaica, during the continuance of martial law, and in a district over which martial law then prevailed, which had been proclaimed there for the purpose of suppressing an insurrection, and for the preservation of the public peace in the said island, cruelly, wantonly, and wrongfully, caused three men, severally named Richard Walton, Tommy Miles *alias* Tom Bell, and John M'Call *alias* George M'Quarry M'Call, to be shot to death; the said act not being done by him, the said Ensign Cullen, in good faith, for the purpose of suppressing the said insurrection, or for the preservation of the public peace in the said island."

PLEA.

To which charge the prisoner pleads "Not guilty."

The prisoner here hands in a written document, praying, for reasons therein assigned, that his trial might be postponed. This document is read in Court, signed by the President, marked (A), and attached to the proceedings.

The Court is cleared for deliberation.

2. *By Court to Prosecutor.*] The Court is re-opened, and Lieutenant Colonel Daniell, 28th Regiment, who appears as prosecutor, is asked whether he has any observations to offer on the document in question. The prosecutor declines to make any remarks thereon, but leaves the matter entirely to the discretion of the Court.

The prisoner, at the instance of the Court, produces a witness in support of the statements contained in his written application for a postponement of his trial.

EDWARD WHITEHOUSE LEWIS, Practitioner in the Courts of Law in this Island, being duly Sworn, is Questioned by the Court.

E. W. Lewis.
2 Oct. 1866.

3. *By Court.*] ARE you aware that the statements contained in the paper handed in by the prisoner, that his legal advisers will be necessarily engaged in Spanish Town, are correct?—I am.

4. *By Prisoner.*] How long do the sittings of the Supreme Court last by law?—Two weeks.

5. Are they now pending?—They commenced yesterday at 10 a.m. and sit from day to day for two weeks. I may add, that I attend here myself to-day from a sense of courtesy to this Court, as I ought to have been professionally present in Spanish Town.

6. Are you engaged in the business now pending in such court?—I am.

7. Are you acting as one of the professional advisers for me?—I am.

8. Is the Advocate General the counsel acting as my professional adviser?—He is.

9. Can the Advocate General or you properly render your assistance to me on this trial while the sittings of the Supreme Court are now pending in Spanish Town?—We cannot.

10. Have you been able to prepare properly my defence whilst the sittings are now pending, and are you aware that the Advocate General is neglecting his professional duties to render his services to me for the honour of the service?—I have not been able to prepare properly the defence; I believe he is.

11. Is he now extensively engaged in the business pending in the Court?—I believe he is, and he has matters of mine in hand in the Court.

12. *By Court.*] Will the prisoner be prejudiced by the proceedings going on to-day till four p.m.?—I do not think that he will if the evidence is to be formal only.

13. *By Prosecutor.*] Will the prisoner be prepared to proceed with the inquiry immediately after Saturday, the 13th inst., should the Court allow the postponement asked for?—He will on 15th inst.

PROSECUTION.

All evidences are ordered to withdraw, and the Prosecutor then, with the Court's permission, reads an address, which is marked (B.), signed by the President, and attached to the proceedings.

First Evidence for Prosecution.

The Hon. EDWARD JORDAN, C. B., being duly Sworn, is Questioned by the Prosecutor.

Hon. *E. Jordan*, C. B.

14. *By Prosecutor.*] WHAT is your name, and what public position did you hold in the month of October 1865?—My name is Edward Jordan, and I held the appointment of Governor's secretary, and of island secretary in October 1865.

15. Can you give the Court information, arising out of the discharge of your official duties, of the proclamation of martial law?—As Governor's secretary I had to countersign the proclamation issued on 13th October, and I also directed it to be posted on the door of the Court-house in Kingston that day.

16. Was it posted according to your direction, and on what day?—It was posted on the same day.

17. Was that the usual and official mode of publication of a proclamation; and did martial law thereafter become operative in the county of Surrey, except in the city of Kingston in Jamaica, and how long did it remain in operation?—It was the usual official mode of dealing with proclamations. Martial law commenced immediately after the posting and continued for 30 days, when it ceased from effluxion of time according to law; and martial law became operative from the period of posting the proclamation in the county of Surrey, except in Kingston.

18. Did the Act of Indemnity, 29 Vict. c. 1, receive the Royal Assent of Her Majesty, and was such assent communicated to you in the usual course of your duty; was it specially confirmed, and is this now produced an authorised copy of that Act?—This printed copy is an authorised copy of the Act 29 Vict. Session 1, c. 1; the Act received the assent of Her Majesty, which assent was communicated by an Order in Council; the assent was entered up in the records of the office by me as island secretary (marked (C.), signed and attached as usual).

Prisoner declines cross-examining this Witness, who thereupon withdraws.

Second Evidence for Prosecution.

LEWIS BLYTH HOLE, Captain 2nd Battalion, 6th Regiment, being duly Sworn, is Questioned by the Prosecutor.

Captain *L. B. Hole.*

19. *By Prosecutor.*] WHERE were you on duty in the month of October 1865; and did you receive any order to send a detachment to the Plantain Garden River; if such an order was in writing, produce it to the Court?—I was at Newcastle, Up-Park Camp, on board Her Majesty's ship "Wolverine," Port Antonio and Manchioneal; I received from Morant Bay the order produced, dated 20th October 1865, 10 a.m.; it arrived at Manchioneal about 5.20, p.m.

Order produced in Court, and read, marked (D.), signed by President, and attached to the proceedings.

20. Did you carry the order into effect, and in what way; whom did you dispatch, and to what

what place did you direct them to go?—I carried the order into effect; I gave orders in accordance, and saw the party march at 5 a.m., 21st October 1865. I dispatched Ensign Cullen in command of the party, and Dr. Morris in medical charge; and I directed them to go to the post-office at the spot indicated in the order; the post-office at the Plantain Garden River District on the direct road between Manchioneal and Bath.

21. Is that post-office you speak of near to an iron bridge?—I believe so.

22. *By the Prisoner.*] Is not that, the order produced, the only order which I received as my instructions on the march mentioned in that order?—That is all I can recollect; I do not recollect any other.

23. How long had I been in the service when I was entrusted with the command referred to, as stated by you?—I believe about three months; no, I find by an army list, about seven months.

24. How long had I been in the Colony of Jamaica when I was placed in command of the detachment mentioned in the order produced?—I am sure I do not know; not very long; some two or three months, or perhaps more.

25. Are you aware that I was ever before under any separate command in Jamaica till I was entrusted with the command mentioned in the order?—I sent you one day in command of a party to Friendship, but you returned the same day, and I do not think you were ever in command of a party in Jamaica before.

26. What kind of troops were placed under my charge; were there any recruits and Africans, or newly enlisted men?—They were troops difficult to manage; on the march they straggled a great deal; nothing could keep them together. By frequent halts I managed to keep them pretty well together. I do not know of my own knowledge about the length of the men's services; Captain Ross would know that better than I can do.

Captain *L. B. Hole.*

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27. Are you aware whether or not I was only four months in the island next before the time when I was appointed to the command of a detachment mentioned in the order produced, and that I was ever in this island before?—I believe I know you were only a short time in the island. I have already answered that as near as I know. I believe you never were in this island before.

28. What is your experience as to my character for humanity, and as an officer during the time you have known me?—I believe Ensign Cullen to be a very humane man; as regards his character as an officer while at Manchioneal, I can only say he gave me every satisfaction: very quiet and gentlemanly on all occasions, and willing to do any service required of him.

Re-examined by Prosecutor.

29. Can you give the Court the names of any of the non-commissioned officers or men who went with the detachment?—I can only recollect the names of two at that time: Company Serjeant-major Wolstenholme and Corporal Hunter, both of 1st West India Regiment.

30. *By the Prisoner.*] Are those men in the colony now?—They are; the company serjeant-major is now a private in 2/6th Regiment at Newcastle, and Corporal Hunter I have just seen.

31. Are you aware whether a number of those who accompanied me in that detachment are not now absent from the Colony; if so, state their names?—I can give no answer to that question. I do not know where they are; if I saw them I would not know many of them, and the two names given by me are the only ones I recollect.

[Witness withdraws.

Third Evidence for Prosecution.

HENRY CLARK, being duly sworn, is Questioned by the Prosecutor.

32. WHAT is your occupation; did you proceed at any time, and when, to the Iron Bridge near Duckenfield Estate, in the parish of St. Thomas-in-the-East, and did you go there on duty, and what did you do there?—I am in the Royal Engineer Department as clerk of works; I went there in company with Dr. Kerr, in the same carriage, on 26th of last month, to the Plantain Garden River Post Office, and from there to a gap in the hedge of the Duckenfield grass piece. I went there on duty, by a general order, and when there I made a survey of the locality, which I produce to the Court. This plan is marked (E), signed by President, and attached to the proceedings. I also produce a plan and elevation of the post office; also a view of the logwood hedge, taken from the post office; these are marked respectively (F.) and (G.), signed by President, and attached to the proceedings.

H. Clark.

33. Explain the drawings now produced to the Court?

The explanations of the three plans are given to the Court, and in view of the prisoner, by the witness.

34. *By the Prisoner.*] Had you any personal knowledge of the locality in the month of October 1865, or before you went down on this duty?—I never was in that part of the country before.

35. Are you aware that the hedge, in which is the bamboo gate, had been recently cut lower before you went on this duty. Did it not then so appear by marks?—I had not been so informed, nor did it strike me so before; but now I think it very probable it had been cut, as it was so regular.

36. Is not there a river with high embankments just at the back of the post-office, the same river which runs under the Iron Bridge?—The same, with very steep banks; it runs at the back of the post-office.

37. Standing at the post-office, could you, when you went down, see the gate of old bamboo rails in the gap or hedge of Duckenfield grass piece?—No, you could not see the bamboos; a turn in the road just hid them, and the fence was not so high as the hedge.

Re-examined by the Prosecutor.

38. *By the Prosecutor.*] Were they growing bamboos, or merely stakes or rails tied together to form a fence?—They were dry cut bamboos which a man could put up or take down in a few minutes; they were not growing bamboos: it is understood

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understood that this applies only to the gap, and not to the growing logwood hedge.

39. Were the bamboos tied or planted or in any way put up to form or act or serve the purpose of a fence?—They appear merely to have been put to stop the gap to keep cattle in; for no other purpose, as a man could easily stoop and get through; in fact, it was a mere temporary expedient to save the expense of a gate.

40. Standing at the post-office door, could you see the head of a person standing at the bamboo fence, as represented in the small drawing marked (G)?—Not exactly at the bamboo fence, but about a yard from it inside.

41. *By Prisoner.*] Do you mean that you could see that only in the state you found the hedge in on 26th September 1866 as cut lower?—Standing close to the hedge you could not, but if he were further away you could see more. I mean, if the man looked at were standing close to the hedge, you could not see more of him than his head and shoulders.

42. *By Prosecutor.*] Then we are to understand that though the drawing marked (G) is imaginary, yet, that if a man stood in the road, close to the bamboos or hedge, his head and shoulders would be seen from the post-office door, as represented in the drawing.

Question by prosecutor objected to by prisoner as drawing an inference which the Court should judge of from facts. The witness is therefore directed not to reply, and the prosecutor is requested to amend the form of his question in order to elicit the information he requires.

43. *By Prosecutor.*] If a man had stood at the hedge or bamboo fence outside in the road, could you have seen his head and shoulders from the post-office when standing on the floor as you have represented the head and shoulders of a man in that drawing?—I believe that a man could stand at the bamboo fence completely hidden, owing to the difference of thickness between the bamboos and the growing hedge. The logwood hedges are about four feet thick, the bamboo is about four inches, but if a man stood away from the bamboos either in the road or in the field, he could be seen.

44. What is the height of the logwood hedge?—I should think about five feet from the top of the bank, when a person is touching the hedge.

45. *By Prisoner.*] Are there not large growing bamboos overhanging the road opposite the bamboo gate?—There are bamboos on the opposite side growing down to the river, and they hang over, but do not hide the road; the width between the bamboos and the logwood hedge is about twenty feet.

[The witness withdraws.

It being now four p.m. the Court closes, and in compliance with the suggestion of the prosecutor, adjourns to the Duckenfield Post-office, to meet there to-morrow at such an hour as may be found practicable.

Second Day, 3rd October 1866.

3 October 1866.

At 3 p.m. the 3rd October 1866, the Court having proceeded in Her Majesty's Ship "Barracouta" to Port Morant, and thence to the Plantain Garden River Post Office, re-assembles, pursuant to adjournment: Present, the same members as yesterday, as well as the prisoner.

The evidence of Mr. Clark, the third witness for the prosecution, given yesterday, was read over for the information of the Court, and the Court compared the plans put in by him with the actual locality.

The Court further directed a man to be placed close to the bamboo-fence, and then ascertained, by personal observation, that his head could be seen from the door of the Post Office, nearest the bamboo-fence; but that from the centre door of the Post Office building, standing upright on the floor, no part of the man could be seen, the view being intercepted by the roof of the piazza, but he could be seen from the bottom step. A person was also placed at the spot marked "Grave," in the plan (E.), and it was ascertained in the same manner that he could be seen from the floor of the Post Office-door nearest the bamboo-fence.

The Court further observed that the logwood-hedge had been trimmed or cut lower, as evidenced by the cuttings lying under the hedge in heaps, extending from the Post Office to the bamboo-fence, and for a considerable distance beyond.

The Court is closed for the purpose of deliberating on the request for an adjournment, urged yesterday by the prisoner.

The Court being re-opened, the prisoner is informed that his request has been conceded, and the Court therefore is formally adjourned till 10 a.m., 16th instant, at Up-Park Camp; the additional day of adjournment being granted on the request of the prosecutor, in closing his address yesterday.

Third Day, 16th October 1866.

On Tuesday the 16th October 1866, at 10 a. m., the Court re-assembles at Up Park Camp, Kingston, pursuant to adjournment: present the same members as on the former meetings of the Court, and the prosecution is proceeded with. 16 October 1866.

Fourth Evidence for Prosecution.

Peter Phillips, being duly sworn, is questioned by the Prosecutor. *P. Phillips.*

46. *By Prosecutor.*] Do you remember the martial law time; when was it, and where did you live at that time?—I remember it; it was on 21st October last year, and I lived at Duckenfield.

47. Did you send any prisoners to anybody, and from what place; and to what place, and when did you send them?—One of the constables brought prisoners to my house, and I sent them out to the Iron Bridge on 21st October.

48. How many prisoners, and do you know the names of the prisoners; if so, state them?—There were four, and one got away: one was Richard Francis; one, John M'Call; one, George Walton, and one Tommy Miles.

49. Do you know what became of those prisoners?

Prisoner objecting to this question, the Prosecutor withdraws it.

50. Did you see them again alive or dead, and where did you see them or their bodies?—I saw them 22nd October, dead: they were tied to a fence next the bridge, standing on their feet, but dead.

51. What sort of fence were they tied to when you saw them dead?—Bamboo fence.

52. Where was the fence?—Lower down than the Iron Bridge.

53. How far lower down than the Iron Bridge. Was it near the Plantain Garden River Post Office?—I did not measure it, but less than a chain; it was near the post-office.

54. You say the men were dead; did you see what caused their death? Yes; they were shot.

55. What is Duckenfield, and where is it?—An estate making sugar, in St. Thomas'-in-the-East.

56. What do you say is Walton's name; what is the right spelling of his name?—George Walton; I do not know the spelling; I cannot read, but it is George Walton we call him.

57. Are you quite certain that the dead bodies you saw tied to the bamboo fence were the same men you sent to the Iron Bridge, except the one who got away?—The same men; I know their faces.

58. When the four men were brought to your house, what was the charge against them?—The charge against them was stealing nails on the estate, and oil, and rum.

59. Do you remember the names of constables you sent the four men in charge of, and if so, state them?—I remember them; Cyphus Wills, Samuel Bryan, and George Colson.

60. *By Court.*] What is your occupation?—I am head man on the estate of Duckenfield, and constable in the parish.

61. *By Prisoner.*] Where is your house?—At Duckenfield estate, on my own land there.

62. How far is your house from the Iron Bridge?—Half a mile.

63. Why cannot you tell the beginning of martial law?—Because I did not date it.

64. Which comes first, November, April, October, or September?—September comes before October, April first.

65. How do you remember it was the 21st, if you did not take the date?—After, I took the date, not the beginning.

66. When did you take the date?—The 21st of October.

67. Did you take the date on the same 21st, or after?—The same 21st.

68. Why did you take the date?—On purpose to remember when the men were shot.

69. You say you sent the prisoners to the Iron Bridge; did you go at the same time with them, or remain at your house and go on with your work that day?—I remained at my house; I did not go there at all.

70. At what place did you take the date?—In my own house.

71. On what day in your own house?—The 21st.

72. Where is the book or paper?—I cannot write; I asked the white people what date, and I hold it in my head.

73. What day of the month is this?—I cannot say, because I did not consider it at all.

74. Have you all along held the date of the 21st in your head, and not in a book?—I held it in my head because I cannot keep a book.

75. Then you swear you did not write the date down on the 21st?—No, I did not write it down.

76. Did you write down the date of the 22nd or keep that in your head?—I keep that in my head; from the 21st to 22nd I keep.

77. You say you considered the day, and asked white people; who was it that told you the date; what white people?—Charles Macdermott, the bookkeeper of the estate of Duckenfield.

78. Did you ask any white people to tell you the date of the 22nd, and who were they?—I asked Charles Macdermott from the 21st to 22nd, and I keep it in my head.

79. When did you ask the white people to tell you the date?—On the 23rd I asked, when the men were killed and buried.

80. What were the days of the week on which you sent prisoners and saw them tied up?—Saturday I sent them, Sunday I saw them tied up.

81. Did you on the 21st or 22nd at the time ever tell the overseer at Duckenfield of these prisoners or their deaths?—There were no white people there while the martial law was going on; they came back after martial law.

82. You say no white people at all on the estate;

P. Phillips.

16 October 1866.

estate; from what time to what time?—From the beginning of martial law they ran away; they began to come back from 23rd to 24th.

83. Where were you going the morning of the 22nd?—I was coming from Golden Grove to Duckenfield to my house.

84. You say you saw the three bodies on the 22nd; what time of day was it?—About 10 o'clock, if not later; I had no watch; I judge it about that time.

85. Did you stop to untie the bodies?—No; I only look upon them.

86. Did you touch the bodies at all?—No, never.

87. Did you merely pass by along the road, and so see the bodies?—Yes.

88. Do you know George Manning?—Yes.

89. Was Manning ever charged at this time before you with selling cutlasses or macheets to the rebels?—Not before me; I was not there.

90. Was he ever sought for about that time to be flogged?—I never was there at all to hear.

91. Do you know that he was running away and hiding about that time?—Yes; Manning did run away.

92. When did he run away?—Same day the three men were shot, after the soldiers left.

93. Did you remain at your work the whole day of 21st, Saturday?—I called in the morning at Golden Grove, and after I came back I went away; I did not work that day.

94. Where did you go to when you went away on the Saturday?—I went to Golden Grove, and returning to my house, I came by the bridge; but this means Sunday. On Saturday I never went away from my house at all.

95. Did you see Manning at all on Saturday?—No.

96. Did you ever give any evidence before Mr. Gurney or Mr. Maule, the Commissioners in St. Thomas-in-the-East, or in Spanish Town?—I gave evidence before Mr. Jackson; but I do not know the names of any other gentlemen. I never went to Spanish Town to give evidence.

97. In what month and year did you give evidence to Mr. Jackson, and where?—This day two weeks. I gave evidence to Mr. Jackson, at Golden Grove Estate, about two weeks ago. I do not recollect the date.

98. Have you a good memory or a bad one?—When I study to myself I have a very good memory; I remember what done very long.

99. Was your first evidence that given to Mr. Jackson; had you given your evidence before that to any magistrate, on oath or otherwise, in Spanish Town or St. Thomas-in-the-East?—I called by Mr. Chisholm on Sunday, New Year's day, before Mr. Sinclair, a magistrate, but not for that parish; this was upon oath; they take me to show the grave at the Iron Bridge that Sunday; this was in St. Thomas-in-the-East; and they told me they were going to write it to Spanish Town, and if I was called I was to go; but I never was called.

100. Was Manning ever charged with being concerned in the rebellion about that time?—Yes, I heard ——

> Prosecutor objects to the question, on the grounds that such a course of examination is wholly irregular. In the first place if the evidence sought be shown to be true, it is no disqualification of Mr. Manning's evidence. In the next, any such evidence ought to be taken from Manning himself. If Manning be called, he can be examined to it; if he be not called, evidence of the character now sought will be only unnecessarily lengthening the proceedings by placing upon them extraneous facts.
>
> To this the Prisoner submits that he has a right to show the character, bias, and motives of Manning, a principal witness against him. His credibility is not likely to be sufficiently tested by only asking him questions relating to himself.
>
> The court is cleared for deliberation. The Court decides that the question may be put.
>
> The court re-opens, the above decision is announced, and the Witness directed to answer the question.

Mr. Sinclair charged Manning before my face with bringing rebels on to the estate; but I tell him no, a man like that do good.

101. *By Prisoner.*] Was it after that charge that Manning tried to hide himself?—Yes.

102. What is Manning employed in besides keeping a shop at Golden Grove Post Office?—He has no other employ there but keeping a shop and the post-office.

103. What does he do on Sundays and on the evenings of week days, to your knowledge?—I never see him do anything but in his shop and post-office on week days; on Sundays he goes to his chapel.

104. Do you or do you not know that Manning is a local preacher, near Golden Grove, or Duckenfield?—No, I do not know; I never see.

105. Did Manning ever speak to you on these matters, or you to him, about dates or persons?—No, never.

106. Are not you and Manning very good friends?—Not very good friends; but we never quarrel with one another.

107. *By Prosecutor.*] Do you see the other gentleman who was with Mr. Jackson when you gave evidence to him at Golden Grove, in this room now?—I do not see him now; he was a fair white buckra.

108. *By Court.*] In what county is St. Thomas-in-the-East?—I do not know the meaning of the word.

109. What were the names of the men you saw dead, tied to a bamboo fence on 22nd October last year?—Tommy Miles, John M'Call, and George Walton.

[The Witness withdraws.

Fifth Evidence for Prosecution.

CYPHUS WILLS, residing on Duckenfield Estate, Head man for carrying gang, being duly sworn, is questioned by the Prosecutor.

William Herbert, Serjeant Instructor of Musketry, 2nd West India Regiment, is duly sworn to act as Interpreter.

C. Wills.

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110. *By Prosecutor.*] Do you remember martial law time; when was it, and where did you live at that time?—Yes, it was 21st day when I carried prisoners to the Iron Bridge in October last year; I lived then at Duckenfield.

111. How many prisoners did you carry to the Iron Bridge?—Four; the bookkeeper called me to carry prisoners to the Iron Bridge.

112. Do you know the names of the prisoners?—Yes; one was Richard Walton, George McQuarry; one was Tommy Miles, and Richard Francis, who got away.

113. Did the four prisoners go to the Iron Bridge with you?—Three went to the Iron Bridge, one got away.

114. What is the name of the bookkeeper with whom you went to the Iron Bridge with the prisoners?—Bryan.

115. Did any one else beside Bryan go with you?—Yes, John Coshee,

116. What did Bryan say when he got to the Iron Bridge, and whom did he speak to?—Bryan spoke to the officer, and say he bring prisoners.

117. What is the name of the officer?—I do not know his name, but I know himself.

118. Point the officer out if he is in the court.

The witness points out Ensign Cullen, the prisoner.

119. What did Bryan say to the officer?—He said he bring prisoners. Officer asked Bryan what prisoners do; Bryan say prisoners thieve rum and thieve nails; he bring them there for flog them, for learn them sense. Officer turned back.

120. What did the officer do when Bryan told him this?—He call doctor and him, and doctor come. Doctor asked Bryan what prisoners do; he said thieve rum and thieve nails. Doctor say must shoot prisoners, and the soldiers took prisoners from me, and I turned back; officer and doctor and soldiers all go. I walked about two or three chains, when I hear about 10 guns.

121. What did you see them do with the prisoners?—

Question withdrawn by Prosecutor, as no intelligible answer could be obtained.

122. Where did they take the prisoners to before you left?—Iron Bridge.

123. Did they go past the Iron Bridge or over the Iron Bridge, or in what direction?—They did not go over the bridge; they took them two chains and a-half, and the doctor gave orders to kill them.

124. Did they go straight down the road?—They kill them on the King's road.

125. Did you see anything more on the same day you took the prisoners to the Iron Bridge, beyond what you have already stated?—I no see anything more,

126. Did you go back to the place next day?—Yes; the next day I come from Golden Grove, and I saw them tied with their hands behind them. This was Sunday.

127. Whom did you see tied to the fence on Sunday?—George M'Quarry, Tom Miles, and Richard Walton.

128. What sort of fence was it?—Bamboo on one side and logwood on one side.

129. How do you know it was the same three men you took to the Iron Bridge on Saturday that you saw dead and tied to the fence on Sunday?—Two of them countrymen; my own country; Africans.

130. Who went with you on the Sunday, when you saw the dead bodies?—Peter Phillip and Bryan come to Mr. Manning's shop at the Iron Bridge.

131. *By Prisoner.*] Did you see any other white officers or soldiers there on the day on which you say you took prisoners; will you swear that there were none?—I saw doctor and officer, and plenty black soldiers; I saw no white soldiers, unless they were in the house and I not see them; I saw no white officers, except the doctor and the officer.

132. Did you see any white serjeant-major on that day?—No; I see plenty soldiers there, but I only know doctor and officer.

133. Can you read or write?—No.

134. Had you ever seen Ensign Cullen before the day of which you speak and say you took prisoners?—The first day I carry prisoners to the officer was the first day I know him.

135. How do you come to know it was the 21st?—I know it was 21st, because I know this is 16th.

136. You have sworn already that the day you took prisoners was the 21st; how do you know it was the 21st?—It was Saturday 21st; the day it began in Morant Bay I cannot tell, but I took prisoners on 21st.

137. You were not asked about the 16th today. What made you say this was the 16th, when you were only asked about the 21st of October?—When I go to church I hear the parson name the day.

138. Did you hear that the last witness was asked about the date of this day, and that he could not tell?—I do not understand the question.

139. Do you know Peter Phillips, who was examined here to-day?—Yes.

140. Did you see him to-day?—Yes, I meet him here.

141. Do you know that he was examined here to-day?—Yes.

142. Did you see him after he had been examined to-day?—Yes, I see him, but gentlemen of Court say not to go close to him.

143. Did any one tell you that to-day was the 16th?—Nobody tell me, but parson say 14th on Sunday.

144. Did you tell Busha, on 21st or 22nd, of what you saw on 21st or 22nd?—I did not.

145. Has anybody since told you that the date was the 21st on which you took prisoners?—Yes, I heard.

146. Who told you?—I hear Bryan, bookkeeper, talk and say it was 21st.

147. When did Bryan tell you so?—This make 12 months since him talk.

C. Wills.
16 October 1866.

148. When and where was it you talked with Bryan, with gentlemen at Golden Grove?—Last year, at Golden Grove.

149. Tell us the names of the gentlemen?—Mr. Sinclair.

150. Did you, on the day you speak of as the day you took prisoners, put down any memorandum, or did anybody do so for you?—No one wrote, but talked about 21st.

151. Before the Royal Commissioners in Spanish Town, did you then, when the facts were more fresh in your memory, positively swear that the 21st was the day?—

No intelligible reply could be obtained to this query, and it is therefore repeated in another form.

152. Did the Commissioners in Spanish Town ask you if 21st October was the day?—I cannot tell; I can't write; they may have asked me, but I cannot tell.

153. Which comes first; October, September, June, April, or December?—I understand some, but I forget some. When October done, November come, when November done, December come, and when December done, January come, and when January done, February come. I remember a little, but not the rest.

It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, 17th instant.

Fourth Day, 17th October 1866.

On Wednesday the 17th October 1866, at 10 a.m., the Court reassembles at Up Park Camp, Kingston, pursuant to adjournment: present, the same members as yesterday, and proceeds with the cross-examination of Cyphus Wills.

C. Wills.
17 October 1866.

154. *By Prisoner.*] Did you ever see the officer in white clothes before yesterday, when you pointed him out at the table in this room?—I never saw him in white clothes before, but in red.

155. Was the officer pointed out to you yesterday at any time in white clothes?—No; nobody show.

[The Witness withdraws.

Sixth Evidence for Prosecution.

George Colson, Constable, residing at Duckenfield, being duly sworn, is questioned by the Prosecutor.

G. Colson.

156. *By Prosecutor.*] Do you remember the martial law time; when was it, and where did you live at that time?—Yes. November; I do not know the certain time; I do not read and write. I lived at Duckenfield at that time.

157. What parish is Duckenfield in?—In St. Thomas-in-the-East.

158. Do you remember any soldiers coming to the Iron Bridge during martial law?—Yes.

159. When was that?—They came that Sunday.

160. Are you sure it was Sunday?—No, it was not Sunday.

161. When was it then?—I cannot tell the right day they came to the Iron Bridge.

162. Did you take any prisoners to the Iron Bridge, and when did you do so?—I did on Saturday.

163. Who went with you to carry the prisoners?—Bryan.

164. Anybody else?—Cyphus Wills. Bryan gave them to me and Cyphus Wills to carry to the Iron Bridge.

165. Do you know the names of the prisoners; if so, say their names?—John M'Call was one, Tommy Miles, and Richard Walton.

166. Was there any other prisoner with you when you left Duckenfield?—There was four. Richard Francis get away in the road.

167. What did you do with the three prisoners when you got to the Iron Bridge?—When I got to the bridge, Mr. Bryan went up to the officer and call him, and when he did come, they discoursed; Bryan and the officer was talking, and he asked Bryan what did they do, and Bryan tell the officer they steal nails and rum, and directly the soldiers take them away from me, and I delivered them up.

168. How many officers did you see?—One.

169. Did you see anybody beside the officer talking to the officer?—Not directly; for a little time the officer walked off to the office and call out the doctor.

170. Did you see the officer and the doctor talking?—Yes.

171–2. Did you hear the soldiers say any thing?—No, not directly.

173. Did you afterwards?—No.

174. What did they do with the prisoners?—A little while I stood up, then I walk off about a chain, then I hear a voice say, Shoot; but who said the shoot I cannot tell, whether soldier or anybody else. Then after I hear the shoot, I did come back to the party, and I did see the men tied. Two of them were tied together, and one tied singly, and John M'Call turned his head towards me, and bowed his head to me; and there was about 12 soldiers along with them, and pushing them along the road. Then Dr. Morris was close to the soldiers who pushed them along, and the other officer was further along the road, a little further behind. Then after they went to the bamboo tree, a little lower than the smith's shop at the logwood fence, and tied them against the bamboo fence; the bamboo on one side, the logwood on the other in one line. After I see them tied, I could not bear to see any more, as the soldiers were so anxious to shoot, and I come away to my place.

175. At first, before the men were taken down the

the road past the smith's shop, what were the men tied to?—Tied to the post-office post; and Mr. Manning said, "No, must not tie them; to take them away."

176. Do you know the name of the officer?—Mr. Cullen.

177. Would you know the officer if you saw him?—Yes, I would know him.

178. Look around this room well, and point him out, if he is in the room?—

The Witness points out Ensign Cullen, the Prisoner.

179. Were any of these three men any relation of yours?—No; friends, but no family at all.

180. Did you hear guns fired off after you left, and how soon after?—Yes; I was coming away when the guns fired; not long after.

181. Have you seen any of these three men, M'Call, Walton, and Miles, since that day?—No.

182. Did the officer see and hear what was going on?—

Question withdrawn by Prosecutor.

183. How far was the officer from the soldiers with the prisoners, while they were going down the road to the bamboo fence?—A little way; a couple of yards.

184. How were the three men dressed; what had they, or any of them, round their waists?—John M'Call had a large belt round his waist; the others nothing but shirt and trousers.

185. What sort of belt?—A leather belt.

186. *By Prisoner.*] Show what you call a couple of yards?—A couple is three yards (*shown by Witness pacing on the floor three long steps*).

187. Was there a large number of people there that day?—Very; a large number.

188. Were there as many as 500?—No, not so many.

189. How many then do you suppose; was it not a market-day?—Yes; Saturday was a market-day; people all coming along, and soldiers; but I cannot say how many. I did not count them; I not able to count.

190. Do you know that plenty of officers, soldiers, and volunteers were about Hordley, Duckenfield, and Golden Grove, about that time?—Yes, I do. I know the volunteers; they were at Golden Grove. I only say what I see. One day the volunteers rode from Golden Grove to Duckenfield, and went to Dalney.

191. Did you ever see the officer before in white clothes?—No.

192. Had you ever seen the officer you spoke about, before that Saturday on which you say you took prisoners?—No.

193. Can you really recollect whether on that Saturday you were standing close to the officer, or whether there were people standing between you and him?—People were standing between me and him; Bryan was standing in the middle of him.

194. Did you not say just now that you were not near enough that day to the officer of whom you speak, to see what clothes he had on?—I did not say I observed the clothes; when I first go I was near, but not after; I did not observe what clothes he had on.

195. Did you return the same day, at the same time, with Cyphus Wills, to Duckenfield?—Yes.

196. Did you ever tell this story to the busha on the Saturday or Sunday, or to any one on oath before to-day?—No, I never tell him; but Cyphus tell him; I never tell it on oath before to-day.

197. Are you and Cyphus great friends?—Yes.

198. How do you come to know that the day you speak about was Saturday?—I know it was Saturday, 21st October. I know Saturday from Friday.

199. Can you read or write?—No, not at all.

200. Did you on that Saturday ever go further on the road than to the Iron Bridge?—From Duckenfield to the Iron Bridge; no further.

201. Do you know that the grass piece where the bodies were found was an old burial-ground, from time?—No; no burial-ground at all.

202. *By Prosecutor.*] You said that the volunteers rode round through Duckenfield negro houses to Dalney one day; was that the day you took the the prisoners to the Iron Bridge?—No, not that day.

203. You say people were standing between you and the officer; but were you standing near enough to hear what was said and see what was going on?—

Prisoner objects to this question, because it was in effect asked in examination in chief. The Witness ought to be asked where he was standing, and how far from the officer. The Court is to judge whether Witness was in a position to hear what was said and done.

To this the Prosecutor replies that the question seeks to elicit a fact. It arises out of the cross-examination, and is required to clear up the evidence which the cross-examination leaves doubtful. It is not calculated to draw an inference, but to elucidate a fact.

The court is cleared for deliberation. The Court decides that the question may be put.

The court re-opens, the decision announced, and the Witness directed to answer the question.

The only time I was quite close to the officer was when I took up the prisoners; that was the only time.

204. You say you never told this story about killing people, on oath, before to-day. Do you mean that you never told the busha on oath, or anybody else; did you go to Spanish Town?—I did not myself tell the busha on oath. I did not go to Spanish Town.

205. *By Court.*] What day then was it the volunteers rode to the negro houses at Dalney, if it was not the Saturday of which you spoke?—I cannot tell the right day, but it was not on Saturday, because it was a day when the people were working; they don't work on Saturday.

[The Witness withdraws.

Seventh Witness for Prosecution.

RICHARD FRANCIS, Labourer, residing at Duckenfield, being duly sworn, is questioned by the Prosecutor.

R. Francis.

17 October 1866.

206. *By Prosecutor.*] Do you remember the martial law time; when was it, and where did you live at that time?—Yes, it was either the 15th or 14th October. I do not recollect the time, and I lived at that time at Dalney.

207. Were you taken as a prisoner during martial law?—Yes.

208. Where were you taken to, and from what place?—To the Iron Bridge, from Duckenfield pastures, and I was taken to work to mend fence.

209. Did you go to the Iron Bridge, or were they going to take you to the Iron Bridge?—I not go to the Iron Bridge, but the constable going to carry me there.

210. How many men beside you were taken prisoners; tell their names?—Three; Richard Walton, John M'Call, Tom Miles.

211. Did the three you have named go to the Iron Bridge; and if you did not go, tell why you did not?—Yes, the three went; I made my escape; God let me go.

212. How did you escape, and at what part of the road from Duckenfield to the Iron Bridge?—God loosed the tie on my wrist and let me escape into the canes; it was about three chains from the Iron Bridge.

213. Who took you from Duckenfield; tell the names of the constables?—Bryan, a black man, a book-keeper; Halliday, no not Halliday; Cyphus Wills and Colson.

214. Where did Halliday take you from, and where to?—Halliday take me from the working place in the pasture to Phillips' yard; Phillips drove us away from the yard, and Halliday gave us to Cyphus Wills and Bryan. Bryan determined to take us to the Iron Bridge, and he took us four; Halliday did not go.

215. What do you mean by saying they took you to work for the estate; were you to be paid for the work, or what were you to work for?—I went down to the work and pick up a little nail; Halliday say I took a keg of nails; this not so. Halliday call me to work, but I not to get paid at all.

216. Was the work you were to do to be in payment for the nails you had taken?—I do not know; Halliday never tell me when he call me to work; it was on a Saturday, and he take me to Phillips' yard.

217. Did you carry back the nails yourself?—Yes, I deliver it up.

218. Is there a hut on the way from Duckenfield to the Iron Bridge?—Yes.

219. Was it when you got to the hut you made your escape?—The hut is by the barricade, and when I saw the soldiers I jump over the fence and got into the canes.

220. What did you do after you escaped?—I run into the woods.

221. You say that when you got to the hut, on the way from Duckenfield to the Iron Bridge, there is a barricade; was it at the barricade or near to it that you got into the cane-piece, which you say is called Hard-time cane-piece?—Yes; barricade one side, cane-piece the other side; logwood fence in the midst.

222. Did you hear anything while you were in the cane-piece before you got into the woods?—I heard guns fire; more than one gun.

223. When they took you to the negro houses what did they say to do with you?—They do not say anything at all, but carry me straight off; go on, knock out your damned brains.

224. Who said "Go on, knock out your damned brains"?—Bryan.

The Prisoner here requests that he may be allowed to reserve his right of cross-examination in the case of this and any other Witnesses till he enters on his defence.

The Prisoner is informed that his request is granted, the course being quite optional with him.

[The Witness withdraws.

Eighth Witness for Prosecution.

SAMUEL BRYAN, Bookkeeper at Duckenfield Estate, being duly sworn, is questioned by the Prosecutor.

S. Bryan.

225. *By Prosecutor.*] Do you remember the martial law time; when was it, and where did you live at that time?—Yes, in October last year. I lived at that time at Duckenfield Estate.

226. In what parish and county is Duckenfield?—In St. Thomas-in-the-East; Surrey, I think.

227. How long had you lived at Duckenfield Estate before the martial law?—I came to the parish at the latter end of September 1865.

228. Did you take any prisoners to anybody, and from what place and to what place, and when did you take them?—On the 21st October there were four prisoners brought to Peter Phillips' house, and they were taken down by the constables to the Iron Bridge; and on the way to the Iron Bridge one of them got away.

229. Do you know the names of the prisoners; if so, tell them?—I am not acquainted with the names, as I only lately came to the parish.

230. Did you take any of these prisoners to the Iron Bridge, and if so, to whom did you deliver them?—Three of them were taken to the Iron Bridge, and I delivered them to Ensign Cullen and Dr. Morris.

231. Did you go with the three prisoners, and who went with you?—Yes, I did; Cyphus Wills and George Colson went with me.

232. When you went to the Iron Bridge with the three prisoners, did you see Dr. Morris at first or afterwards, and how long afterwards?—The first man I saw was Corporal Beckett,—then Ensign Cullen. Dr. Morris came out to me not ten minutes after.

233. Did you say anything to Ensign Cullen?—Yes, I did. I says to him, "These men have stolen

stolen nails and other things from the estate; I beg of you, you will flog them and let them go." Ensign Cullen then said to me, I go and call the Doctor, and the Doctor came out. I repeat the same words; and he, Dr. Morris, then says to four of his men, "Get up your rifles;" and the moment they took the three men up to the fence, the Duckenfield grass fence, with their hands tied; and after they went up to the rail, I heard the report of the guns. I was sitting down on horseback at the shop-door, and I could only see about the shoulders of the prisoners. After that I saw when Dr. Morris himself take up one of the rifles from the men and load it and fire. Then I did not stop any more; I turned my horse's head and went away. On Sunday, 22nd, I was coming from Golden Grove, and I saw the three men at the rail.

234. Before Dr. Morris was called, and the men were taken to the Duckenfield fence, did you see the men tied, and if so, to what place?—Yes; they were tied coming from Duckenfield, and they carried them to the shop posts and tied them there about five minutes. The soldiers tied them to the shop posts.

235. When the men were untied from the shop posts, what sort of fence at Duckenfield were they tied to?—A bamboo rail.

236. Who went with the three men from the post office to the Duckenfield fence, where you last saw them?—Dr. Morris; Ensign Cullen went a little ways up, then he turned back; the soldiers also went.

237. On what side of the road is that bamboo rail: the same side as the post office, or the opposite side?—The opposite side.

238. On which side of the road did the soldiers stand to shoot; the same side as the post office, or the opposite side?—They stand the bottom side, same as post office, opposite the bamboo fence; the bamboo fence on one side, the men stand at the other, the soldiers stand on the river side of the road.

239. You have said you could see the shoulders of the prisoners when they were tied to the bamboo fence; could you see their heads?—Yes; sitting upon the horse, it raise me up, and of course I could see.

240. Could you also see the soldiers at the same time?—Oh, yes; I saw them.

241. Then could you see when the soldiers fired their guns?—Yes, I did.

242. Could you see any motion in the shoulders or heads of any of the three prisoners when the guns were fired?—Yes; I saw them when the guns were fired stoop their heads forwards; I mean, their heads dropped forwards.

243. Mention to the Court, as near as your memory serves you, and try and remember the names of the people you saw present on that occasion other than the soldiers and officers?—There was Cecilia Robinson, Shopkeeper and Postmaster Manning, Anderson, Abraham Donaldson, Duany, Hamilton; there were more there, but I could not tell the names; I do not remember the names.

244. How did you know Ensign Cullen?—I remember him the week before he come to the bridge; I was in company when he went to Bowden-wharf, when they go on board the "Wolverine."

245. Would you know Ensign Cullen again if you were to see him?—Yes.

246. Point him out, if he is in court?

The Witness points out Ensign Cullen.

247. How far down towards the bamboo fence did Ensign Cullen go with the soldiers and the prisoners?—He go about four yards; he go a little way from the shop door, and then turn back.

248. Did he go far enough to see what the soldiers did?—Yes, I think he could; to my knowledge he could have seen them.

249. Did you hear any order given or any words said about shooting prisoners, before they were taken away from the shop posts down to the bamboo fence?—Yes; I heard when Doctor Morris said to his men to take up their rifles and carry down the prisoners. I did not hear the word "shoot." I did not hear Ensign Cullen say anything.

250. Did you hear any of the soldiers say anything about "shoot" or "shooting"?—Yes; I did hear some of them make the remark of shooting.

251. State to the Court, as near as your memory serves you, the exact words you heard; and were they said in Mr. Cullen's hearing?—I heard a soldier say, "You must say your prayers; I will let your bloody soul fly in five minutes!" but I cannot say if Mr. Cullen heard this, as he was turning back to go into the post office.

252. Where was Ensign Cullen standing at the time when Dr. Morris say to the men to take up their rifles and carry down the prisoners?—They were both together.

253. Did you see Ensign Cullen and Dr. Morris having any conversation before that?—At the same time they were both whispering along together, but I could not hear what they said.

254. Where was Dr. Morris when you got to the post office with the prisoners?—He was inside Manning's private part of the post office.

255. Do you know who called him out?—Ensign Cullen.

256. You say you went back to the post office on Sunday, 22nd; did you on that day go to the bamboo fence, or near to it?—I ride up near to it, where the men were lying down; they were dead; their heads smashed up.

It being now 4 p.m., the Court adjourns till 10 a.m., the 18th instant.

Fifth Day, 18th October 1866.

On Thursday, the 18th October 1866, at 10 a. m., the Court re-assembles at Up Park Camp, Kingston, pursuant to adjournment; present, the same Members as yesterday, and the Examination in chief of Samuel Bryan is proceeded with.

S. Bryan.

18 October 1866.

256.* *By Prosecutor*] What do you mean by lying down; were they still tied to the bamboo fence?—Both their hands were tied to the bamboo fence, and they lay down so (*described by Witness placing his hands together and hanging his body away from the hands*).

257. Were their hands tied behind them to the fence, or how?—They were tied to the fence, their backs to the road.

258. Are you sure the dead bodies you saw tied to the fence on Sunday, were the bodies of the same three men you took to the post office, the day before?—Yes.

259. *By Prisoner.*] What time of the day was it you arrived at the Iron Bridge with the three prisoners you say you carried there?—Well, I think it was about 12 o'clock.

260. How long did you remain at the Iron Bridge after you had delivered up the prisoners, as you have alleged?—Well, I remained about ten minutes.

261. What is your means of knowledge for saying the prisoners were brought to Phillips' house on 21st October last year?—It was on a Saturday, the 21st October, the very day they were shot at the Iron Bridge.

262. Can you read and write?—Yes.

263. You say the people present beside yourself, when you took the prisoners, were Cecilia Robinson, Postmaster Manning, Anderson, Abraham Donaldson, Duany, and Hamilton. Cannot you try now and tell the names of some of the other people; and if you cannot tell their names, how many more in number were there?—No, I cannot remember; I tell the Court yesterday I only lately come to the parish, and therefore I not know the names, except what I tell already; I think there were over 20 there, it was a Saturday and plenty people come to the shop. I was so excited about the soldiers' doing, I did not count people. I turned my horse back; one of them nearly shoot me for my own stick.

264. What is Anderson's first name, and what was he a short time before the rebellion?—I cannot say; I do not know his name. I think he was a saddler; when I went to the shop, I see him working at the saddle trade.

265. Are you a friend of Anderson's?—No, I cannot be a friend of his, as I only come to the parish. I do not know where he lives; I only see him at the post office.

266. Are you not aware that Anderson was flogged at Golden Grove during the rebellion as a rebel?—I see him flogged at Golden Grove; I cannot say what for.

267. You stated yesterday you were book-keeper at Duckenfield; are you so now, or do you mean you were so during the rebellion?—I was book-keeper up till the Monday, the last Monday when I come to Court; my situation is open to me when I go back; the overseer gave me leave to come here.

268. How many soldiers did you see fire their guns; or did you only hear the report of guns?—I heard four report of guns; I saw four soldiers fire; then Dr. Morris take the gun and make the last shot.

269. Before you were examined yesterday, did you ever mention the occurrence you have yesterday and to-day detailed in your evidence to any one, and to whom, and when first did you mention it?—No, not to my remembrance; I saw Mr. Cullen and Mr. Williams at Duckenfield House, after the examination was taken by Mr. Jackson at Golden Grove a few days after, but I did not tell anything but what I say before the Court.

270. Was I present when Mr. Williams was speaking to you, and were you leaving first as I came in?—He was sitting at the door, and as me and Mr. Williams were speaking, he came up.

271. What time of the day on Sunday did you see the bodies you have mentioned you saw?—Well, I think it was about 10 o'clock I saw the dead bodies.

272. What day were you summoned to appear before this Court?—On the 16th; I was summoned to appear at Port Morant; I did meet at Port Morant; I was then discharged by Mr. Jackson, until I get a further subpœna to return to Kingston; at Up Park Camp on the 16th October.

273. Do you know a person of the name of J. L. Dight at Duckenfield Estate, or Dalney; and when last did you see him?—I know one of the Duckenfield book-keepers named Dight; I leave him at Duckenfield on Sunday night last, when I was starting for Kingston.

274. Do you remember having had, two days before you were summoned to appear before this Court, a conversation with him at Duckenfield, in St. Thomas-in-the-East, or about that time, during this month?—I had a conversation with Dight the same night, a Sunday night, when Mr. Williams and Ensign Cullen were at Duckenfield House. I was sent for by the overseer's request; after I returned from the overseer's house to the book-keeper's barracks, Dight was sent for, and when he came to the barracks, I ask him what did they send to call him for; he replied to me that Mr. Williams was questioning if he can give any evidence about the three men that was shoot at the Iron Bridge, during the martial law. He says to me, "I don't know nothing at all about it, for during when the rebellion was here, I was a book-keeper at Vere," but I cannot mention the estate, as he did not tell me; that is the only conversation I and Dight had.

275. In that conversation do you remember saying to Dight that you wished every white man was hung, or words to that effect?—I deny that; Mr. Williams asked me that already, but I deny it. Dight made up that. I have better sense than that.

276. You stated you only remained 10 minutes after you delivered the prisoners, owing to your being so excited; now, all you have mentioned about the shooting of the three prisoners, as alleged by you, did all take place in 10 miuutes?—I said

I said about 10 minutes; perhaps it was more. I had no watch about me.

277. Have you, since the 22nd October 1865, or lately, seen the fence to which you say the men were tied; and when last did you see it; and is it in the same state when you last saw it, as when you saw the prisoners tied to it, as you have stated?—Yes, I saw it last Sunday; it is not in the same state; it has been repaired; it was tumbling down and we made it up new again, round the grass piece.

278. How many times has the fence been cut down since the 22nd October 1865?—I forget the date now, but it has been cut down once just after the men was shoot; I think that was in November 1865; and in 1866, two weeks before I came here, it was repaired again; I mean the logwood fence, and by repaired, that it was trimmed right through. All these questions were asked me by the overseer, and he sent it to Mr. Cullen, and the names of the party who repaired the fence; the first in 1865 was Charles Johnson; he take it for a job; and in 1866, Charles Johnson, William Forster, and Hannibal Phillips; those men repaired it in 1866.

279. *By Prosecutor.*] Don't you know that if you had said such words as "I wish every white man was hung;" or if the overseer or attorney for Duckenfield had heard or believed that you said so, they would have immediately discharged you?—I don't believe they would have keep me up till now.

280. What sort of a fence does a logwood fence make at the top; is it a thick or thin fence, before trimming I mean?—It is thick before trimmed. It grows about a foot from where the fence is trimmed.

281. Can an object, such as a man's shoulders, be seen through the top of a logwood fence, even when not trimmed?—Oh yes.

282. Did you, in point of fact, see the head and shoulders of a man standing at the bamboo fence through or over the logwood fence before it was trimmed, that is, in the month of October last?—Yes, I did. I saw through as if I was looking through the jalousies of this window. *S. Bryan.* 18 October 1866.

283. *By Prisoner.*] What sort of foliage has logwood; I mean large or small leaves, and are the leaves thick or thin?—Oh, very small leaves, and the leaves are thin.

284. *By Court.*] Where was Ensign Cullen when the soldiers fired?—To my knowledge he was at the place where one road goes over the bridge and the other road goes to Holland Estate; on the high road leading to the bamboo fence.

285. When you saw the dead bodies of the prisoners at the bamboo fence on Sunday, did you examine them, and could you, from the marks you saw, judge the cause of death?—Yes; I went up and look at them, and I saw their heads all mashed up; that was the cause of death; they were all bloody, and I saw brains. I remained on my horse. I saw no other marks on their bodies. I said I went up and sit on my horseback; I saw the three men's heads all mashed up, and their brains showing, and bloody. I then returned home.

286. On the 22nd October 1865, how high was the logwood fence between the post office and the bamboo rail, before the logwood fence was trimmed or cut lower?—From the ground to where the fence is trimmed is about five feet, and then the top grows about a foot higher.

The Witness is directed to show on the wall of the room about the height of the hedge when trimmed; and on his doing so, this height was measured in Court and found to be four feet three inches.

[The Witness withdraws.

The Prisoner here informs the Court that he does not intend to call Richard Francis, whose cross-examination he yesterday requested might be postponed till the defence was entered upon.

Ninth Witness for Prosecution.

Isaac Cornwall, Shopkeeper at Amity Hall, being duly sworn, is questioned by the Prosecutor.

287. *By Prosecutor.*] Do you remember the martial law time, and where did you live at that time?—I do remember it. I lived at Amity Hall then. Amity Hall is in the parish of St. Thomas-in-the-East, in the county Surrey. *I. Cornwall.*

288. Do you remember anything particular happening during martial law time; and, if so, state to the Court what it was?—On Saturday, 21st October 1865, last year, I have occasion to go to the post office at Plantain Garden River. Whilst there the troops came down and met me there. I observed one of the soldiers, who I identify since I have been here, had two bottles in his hand, and according to the labels I said, "They two bottles from my shop." He said, "By God, we drank plenty there." I went back to my shop and was told by the person I left there.

The Witness was here interrupted by the Prisoner, as he was merely telling the Court what had been told him; not facts within his own knowledge.

The Witness resumes.

I went back to the bridge and gave to Ensign Cullen (*whom the Witness points out in Court*) my account. He said to me the other officer was resting, that I was to wait. I suppose he meant the doctor. Then I moved off.

289. You say you saw Ensign Cullen there; did you hear anything said in his presence about prisoners; and if so, what was it?—No, nothing; there was no prisoners there at that time.

290. Did you see any white person connected with the military at the post office with Ensign Cullen; and if so, state his name if you know it?—I alluded to the serjeant-major; I do not know if he is a white person, but I think he is; I do not know his name.

291. Did you see any other white person?—I did not see any other white person.

292. After you left to return to Amity Hall, did you hear any noise or report, and what was it?—I heard a report of guns.

293. Did you see the detachment of soldiers as they passed through Amity Hall to go to the post office; and if so, state what officers were with them?—I saw them at the Iron Bridge; I did not see them pass through Amity Hall; when I saw them there were two officers with them,

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one being the serjeant-major; I did not see them all; I rode away because they take mules, so I only saw part; if I had not ridden round away from them I should have met them all. I took no particular notice of the officers the first time.

294. You spoke of a doctor; if you know his name, state it?—Dr. Morris.

295. Are you certain, then, that Dr. Morris and Ensign Cullen were at the Plantain Garden River Post Office on 21st October 1865?—Quite certain.

296. *By Prisoner.*] Did you not say you only saw Ensign Cullen and another white officer; the serjeant-major, whom you call an officer?—Yes; but when the company was returning to Manchioneal I saw Dr. Morris, and I asked a soldier if that was the doctor that was lying down yesterday; and he told me, "Yes."

297. Did you see Dr. Morris on 21st October 1865?—I did not see him personally.

[The Witness withdraws.

Tenth Witness for Prosecution.

CECILIA ROBINSON, residing at Dalney, being duly sworn, is questioned by the Prosecutor.

C. Robinson.

298. *By Prosecutor.*] Do you remember the martial law time; where did you live at that time, and in what situation?—Yes; I was cooking for Mr. Manning at the Iron Bridge Post Office.

299. Do you remember any prisoners being brought to Mr. Manning's shop, the Plantain Garden River Post Office; and, if you do, tell when, if you can, and, also, what you saw?—Yes; it was a Saturday in October, I don't remember the date; 12 months ago I was in the back part of the kitchen, and Mr. Manning called me round to the front, and say I must get a cup of tea for the doctor, and I saw three men tied; one tied this way, one that way, and the other that way, before the shop-door. After I brought in the cup of tea, I asked the boy outside what they going to do with them, and I hand the cup of tea to the doctor, and I was standing up to the door where the men were tied. I see the doctor drink the tea, and come outside to Mr. Cullen, and the two went along, and I went back to the kitchen. When I was in the kitchen I heard guns fire, and I asked what they shot; and they say three men were shot. Then after, when I come out of the kitchen, I saw the soldiers coming back to the shop.

300. You say you saw three men tied; to what were they tied; and if you know the men's names, mention them?—They were tied to the posts of the shop-door; their names were Richard Walton, Tommy Miles, and John M'Call.

301. Do you mean the shop-door, or the posts supporting the shed in front of the shop?—To the posts supporting the shed.

302. Did you see the soldiers go down the road with the prisoners, and who else did you see go down the road with the prisoners and soldiers?—Yes; and I see Mr. Cullen and the doctor, Dr. Morris.

303. Do you think you would know Ensign Cullen again if you see him; if so, stand up and look around and point him out, if he is in this room?—Yes, I would know him (*Witness identifies Ensign Cullen*).

304. Could you see the place at which the guns which you heard were fired, from the place you were at, when the soldiers and prisoners were going down the road?—Yes; I could see the place; I did not see the place when the guns fired, but when I come round to the front, I could see the place.

305. Where were you standing when the guns were fired?—In the kitchen.

306. Then the Court is to understand that from the kitchen you could not see all the way the soldiers and prisoners went?—From the kitchen you can see all the way the soldiers and prisoners went; it was the back part of the shop, when you stand up you can see all the way along; I did see them go all the way along, until they stopped.

307. Where did they stop, and what did you see them do?—They stop at the bottom part of the bridge, along the bridge. After the soldiers went away I did not see them fire; I in the kitchen, and after the soldiers went away I went a bit of the road and I saw two of the men tied with a rope, with their bodies bent this way (*illustrated by bending forward the upper part of the body*), and one was Richard Walton. I could not bear to look at the others, and a few of the soldiers asked me if I were crying; if I want any more, two or three not enough; they say they want more, two or three not enough. After the guns were fired I came round to the shop-door, and I left the soldiers standing at the shop-door, when I went down towards the bodies; the soldiers had then come up.

308. From what part of the kitchen did you see them going down the road?—I was standing at the kitchen-door, front of the road.

309. Where is the kitchen?—The kitchen is at back, away from the shop, near the river; you stand in front of kitchen and look upon road; the kitchen near the place where we get water from the river.

310. Did you see them tie the prisoners, and to what were they tied?—I did not see them tied, but I went down after and see them tied to bamboo fence.

311. How were they tied to the fence?—I saw Richard Walton tied with a rope round his waist, and his hands tied a-back of him; the rope tie him to bamboo fence. I did not look upon the others to see how they were tied.

312. When you went down were the men alive or dead?—Dead. Richard Walton's brains were mashed up and the head; this was after the soldiers came back I went down and saw this.

313. Are you certain the three men you saw dead and tied to the bamboo fence were the same three men, named Richard Walton, Tommy Miles, and John M'Call?—Yes; I know Richard Walton, for we live in one place.

314. Did you know anything of any of these three men before the day you were speaking of; were they friends or relatives of yours; and were they Creoles or Africans?—Yes, I know the three of them; no friends; no family to me; I only see them; two were Creoles; Richard Walton was an African.

315. Did you, at any time during that day, see Ensign Cullen and Dr. Morris speaking together?—No, not after they shot the men; I never

never see them before they shot the men; when I give the cup of tea, the doctor was laying upon the table. Dr. Morris, when he drank the tea, he came outside to Mr. Cullen, and they speak.

316. Did you see Ensign Cullen return from the place where the three prisoners were tied?—Yes; I see them when he and Dr. Morris was coming up the road.

317. When was this?—After they shot the men; after I heard the guns fired.

318. What did they do when they came up; or what did Ensign Cullen do?—I do not know what they do, for I went back to the kitchen.

319. Do you know what became of the bodies of these three men?—Yes, buried. On Sunday morning I saw people come down to bury the bodies; they were buried in the Duckenfield grass piece, below the Iron Bridge, near enough the bamboo fence.

320. Was it near to the bamboo fence to which they were tied; just inside, or how?—Inside; not too near, about three chains.

321. What is a chain?—I do not know what a chain means, but I mean about 12 yards off the fence.

322. Did you see the men digging the graves; and could you see it from the shop; that is, the post-office?—Yes, I see them; you can see from the post-office where the man digging the grave. *C. Robinson.*

323. *By Prisoner.*] Were the men buried in three graves or in one?—I don't know; I don't positive, if it three graves or not. 18 October 1866.

324. What time of day did the people come to bury the bodies, and what day of the week was it?—I cannot tell the time of day, but it was a Sunday; it was about 9 or 10 o'clock.

325. Do you remember being charged before me, at Manchioneal, for stealing a soldier's havresack and money?—I remember the man taking me up, but he steal the thing. I not do it; you ought not to bring that; I did not come here for that; I never steal soldier's money.

326. Is not the kitchen-door facing the river?—It does not face the river; it face the road where the men go down to be shot.

327. How long after the report of the guns did you go to see the bodies; was it an hour or two hours, or how long?—It was not too long, nor too short; it was not an hour.

328. Are we to understand that you did not see the prisoners shot, but simply you heard the report of guns; or what is your evidence on this point?—I did not see the guns fire, but I heard the guns when I was in the kitchen, and then I came out.

It being now 4 p.m. the Court adjourns till 10 a.m., the 19th instant.

Sixth Day, 19th October 1866.

On Friday, the 19th October 1866, at 10 a.m., the Court re-assembles at Up Park Camp, Kingston, pursuant to adjournment—present, the same Members as yesterday—and proceeds with the Cross-examination of Cecilia Robinson.

329. *By Prisoner.*] Were you examined before the Royal Commissioners in Spanish Town, at Bath, or Morant Bay, or Golden Grove?—Yes; at Golden Grove.

330. Was it on oath; if it was, before whom?—Yes; before Colonel Daniell and Mr. Jackson.

331. Do you know if Colonel Daniell or Mr. Jackson had any power to examine on oath? Are you quite sure they swore you on the Bible?—I do not know; I did not kiss no Bible; they call me and tell me I must tell what I know.

332. Have you been a servant of Manning during this year?—Not now; I went away. I left about three months ago.

333. Don't you know you were his servant in March?—Yes, I was in March; this is October.

334. Are you quite sure you saw graves dug; more than one?—I do not know whether three graves or one.

335. Did you see with your own eyes, while the earth was being dug?—I was standing up in the shop, seeing the people digging the grave.

336. Don't you know that Manning went to be examined in March, before the Queen's Commissioners, at Morant Bay?—I know he went to Morant Bay, but I do not know the date of the month. I do not know what he went there for. I do not remember what month.

337. Did you ever kiss the book before Mr. Gurney or Mr. Maule, anywhere in St. Thomas-in-the-East, or in Spanish Town, at any time?—No.

338. Do you know that Manning fled from his shop, and was concealing himself during the rebellion? 19 October 1866.

The Deputy Judge Advocate here intimates his opinion that this question rather deviates from or oversteps the ordinary rule observed in impeaching a witness's character, and quotes the rule "that the credit of a witness may be impeached by the deposition of other witnesses as to his general character, but not as to particular parts of his conduct or facts not relevant to the issue."

The Prosecutor also objects to the question, because the Court is not trying Manning; it is trying Mr. Cullen; because even if all that is assumed in the question, be true, it in no way affects the testimony which the witness is to give, nor can affect it in any way; because the Court is not justified in assuming that Manning is to be called as a witness, or is to be in any way before it; because if Manning's conduct is to be thus inquired into, he claims the right to call witnesses to support his character, and the Court will thus be trying two issues together.

To this the Prisoner rejoins thus: "The law referred to by the Deputy Judge Advocate is perfectly right, but it has no application whatever to the present question. This is not a question as to any particu-

C. Robinson.

19 October 1866.

lar acts or points on which Manning is to be examined, so as to contradict him, but only as to general character, motive and bias. I have a right to ask a question as to the general bias, motive, character of a principal witness against me; the result will be, if the Court disallows this mode of examination, that I must recall this witness and be forced, most hardly, to call her or him as my own witness in defence. I have a right to show by any means (surely by the testimony of a witness for the prosecution) that Manning's general character, motive and bias, is such as to damage his credibility as a witness. The Court has already decided the same question. I am at the same time quite willing to adopt any course that the Court may think right, so that the whole truth, and the true character and bias of all the witnesses, on whose respective credibility this case is to depend, as to the truth or falsehood of the charge for which I am being tried, which may result in the most fearful disgrace which can fall on an officer. The reasons given by the prosecutor are wholly beside the point at issue; the credit of a witness is a material point for the consideration of the Court. Witnesses for the Crown and for the prisoner are constantly allowed to be examined to the point, that a man whose character is under scrutiny is not to be believed on oath without any previous question asked of the witness himself. Surely it is also a matter of credibility of a witness, if he is so swayed by bias, by passion, by religious or political feelings, by being so much concerned in this very rebellion, as to render his testimony utterly unworthy of belief. Does the prosecutor really think that the only course to test the character and credibility of a witness is wholly by the witness himself, whose character for credibility is impeached? If the prosecutor will pledge himself not to call Manning as a witness, his name having already been given in to me, I will not further take up the time of the Court, or if the Court will allow me to enter at a future stage upon the same question, as to character and credibility, I will willingly forbear to pursue this line of cross-examination. There is no doubt whatever that the prosecution would have a right to rebut evidence as to bad character, and those versed in practice in the ordinary courts of justice surely must be aware that this is allowed to be done, although it is always deemed a most unusual course in a criminal prosecution. I again ask, how can this Court judge of the credibility of a witness, unless informed on oath, by cross-examination on oath, of the real character, motive and bias of every witness brought before them? I again submit that the Court has already decided this same point in my favour already; why is it that the character of Manning is so feared by the prosecution?"

The Court decides that the question is inadmissible, as it is a question impeaching the character of a person, put to a witness with reference to a particular part of the conduct of that person.

The Prisoner inquires whether he is to understand, as to this question just decided against him, that he is to be allowed to recall the witness and question her as to the facts referred to in that question, or that the Court will do so. If neither of these alternatives is adopted he will lose the benefit of any knowledge of the witness on this point.

The Court decides that there will be no objection to this witness being recalled, but that it will depend on the nature of the questions intended to be put, whether they will permit them to be answered, the principle being observed as just decided on.

339. *By Prisoner.*] Did Manning remain at his place of business after the day of which you speak, or did he go away, to your knowledge?—He was there the day the people were killed, but he was away on the Sunday morning.

340. Do you know of your own knowledge where Manning went?—I don't know; he did not tell me where he going.

341. Do you know of your own knowledge how long Manning was absent, from that Sunday morning, from his place of business, the shop and post-office?—About a week.

342. Do you know of your own knowledge why Manning went away for about a week from this Sunday morning?—I don't know.

343. As a fact, have you ever, since that day of which you speak to this day, spoken to Manning about this matter; say yes or no?—Yes, one day.

344. Can you read or write?—No.

345. Will you undertake to swear that Manning ever left the shop and post-office at all that day of which you speak, whilst any soldiers were there on the day you speak of?—He did not left the shop when the soldiers were there.

346. How many people altogether were there, on this day of which you speak, about the post-office and iron bridge; the day on which you say the soldiers were there?—I don't know; I no count them.

347. How long were you a cook of Manning, or otherwise in his employment?—I do not know how long.

348. Whilst Manning was absent the week you spoke of, did any soldiers inquire of you for him?—I don't remember any.

349. Do you really positively swear that you do not remember that soldiers did inquire for Manning whilst Manning was absent during that week from you; will you swear that no officer or soldier inquired about that time from you?—I do not remember any soldier, but I recollect Dr. Morris inquire for him.

350. Do you go to Manning's chapel, in St. Thomas-in-the-East?—I don't know Manning's chapel; I attend the church.

351. Will you really swear before this Court that you don't know Manning's chapel?—I never been to Mr. Manning's chapel; I go to church; I don't know what chapel Manning attends, Wesleyan, or anything else.

352. Then Manning has got a chapel; is that so?—I don't know.

353. *By Prosecutor.*] You said Dr. Morris asked for Manning while he was absent; what did Dr. Morris say?—

Prisoner objects to this question.

Prosecutor therefore withdraws it.

354. What time of the day on Sunday did Manning go away; what hour?—I can't say what hour.

[Witness withdraws.

Eleventh Witness for Prosecution.

ABRAHAM GEORGE DONALDSON, Servant of Mr. Manning at Plantain Garden River Post Office, being duly sworn, is questioned by the Prosecutor.

A. G. Donaldson.

19 October 1866.

355. *By Prosecutor.*] Do you remember the martial-law time; where did you live at that time, and what was your occupation?—Yes, I remember; I lived then with Mr. Manning; I was his servant.

356. Are you employed in the service of the Plantain Garden River Post Office?—Mr. Manning employ me; whatever he order me to do I do.

357. Do you remember anything particular happening shortly after the martial law began; if so, state the date, if you remember it, and what happened?—Yes; 21st October, three men were brought to the Plantain Garden River Post Office. When they brought to Ensign Cullen, he order them to be flogged; they applied to Mr. Manning for twine to make cats, and they were tied to a post; the post office post in the piazza. Afterward some conversation took place with Dr. Morris and Ensign Cullen. Dr. Morris order them to be shot, and they were loosed from the post and taken down to the fence; I cannot say who loosed them, but by the soldiers; they were tied to a bamboo fence, and they were shot. This is what I do know.

358. Who brought the prisoners to the post office?—They were brought by Colson, Phillips, Wills, and Bryan.

359. Did you hear who asked for the twine; if so, state it?—No; I saw Mr. Manning give the twine; I do not know who asked for it, but the soldiers.

360. Are you sure that Phillips accompanied the prisoners?—Yes.

361. Who went with the three prisoners to the bamboo fence?—Dr. Morris went, and Ensign Cullen went half part; soldiers went too.

362. Did you go down to the bamboo fence, or any part of the way?—I went but a part of the way; not so far as Dr. Morris is.

363. Did you go near enough to see what was done?—Yes.

364. Did you then see the prisoners tied to the fence?—Yes, I near enough that I might see.

365. Who tied them?—Tied by the soldiers.

366. Did you see them shot?—I was there when they fired; yes, I was there when they shot; I see them with my own eyes shot.

367. Who shot them?—They was shot by the soldiers.

368. What became of the dead bodies of these three men?—They were buried the next day.

369. Where did the bodies remain till they were buried?—At the same spot; the same fence where they tied.

370. How long before they were buried were they untied from the fence?—They tie at the same fence till they ready to bury them.

371. How far do you think that bamboo fence is from the post office?—It is about 80 yards from the bamboo fence to the post office.

372. Was it the people who buried them that untied them from the fence?—Yes.

373. Did you see the bodies buried?—Yes.

374. Do you know who buried them; if so, say who?—I know a few of their names: Zachariah Bayley, John Wright, David Thomas, Harriett Warren, Richard Taylor; the other names I don't know.

375. Did you see the bodies dug up?—Yes.

376. Was it the same or some of the same people who buried the bodies who dug them up?—The same persons who bury them is the very same who dug them up again.

377. In how many graves were the bodies buried?—In one.

378. Are you certain that the bodies which were dug up were taken out of the same grave into which the three men who were shot were buried?—Out of the very same hole.

379. How did you know Ensign Cullen?—I know him by the soldiers.

380. Would you know Ensign Cullen again if you see him; if so, stand up, look around, and point him out if he is in court?—Yes (*the Witness identifies Ensign Cullen*).

381. Do you know the names of the men who were shot?—Yes; John M'Call, Thomas Miles; I do not know the other man name.

382. Were any of these men relatives or friends of yours?—No.

383. *By Prisoner.*] Which was the first day on which you came up here as a witness?—I came on last Monday.

384. Have you been in company with Manning or any of the other witnesses since the day you came up?—I was with the other witnesses, outside here; in the meantime, all together.

385. Have you been day after day since Monday in the piazza of this building with all the other witnesses, and seen the officer whom you call Ensign Cullen brought into this room in charge of another officer?—Yes.

386. In answer to questions before the Royal Commissioners, did you not swear that you did not see Manning there at all; "Not at all; no;" in those words?—He did not go down as far as I went; he stood at the piazza.

387. Was this question asked you in Spanish Town, when you appeared before the Royal Commissioners: "You are certain you heard nothing said to the three men by any soldier before they did fire?" did you answer, "No; nothing was spoken. I did not hear"?—Yes; I think I was asked that question. If anything was spoken I did not hear.

388. Were you also asked by the Royal Commissioners, "Were you nearer than Mr. Manning?" did you answer, "I did not see Mr. Manning there;" and did you not further answer, "I did not see Mr. Manning there"?—Yes; I was asked that. I did not see Mr. Manning there; he was further up.

389. Were you not asked the question before the Royal Commissioners, "Where were their graves, and in how many graves were they buried?" and did you not answer, "I cannot say how many"?—I was asked that question, and I did make that answer.

It being now 4 p.m., the Court adjourns till 8 a.m. the 20th instant.

Seventh Day, 20th October 1866.

On Saturday, the 20th October 1866, at 8 a.m., the Court re-assembles pursuant to adjournment: present, the same Members as yesterday, and proceeds with the Cross-examination of Abraham George Donaldson.

A. G. Donaldson.

20 October 1866.

390. *By Prisoner.*] In answer, before the Royal Commissioners, to a question, "Did you see them (the bodies) buried;" did you answer, "I was not there; but they were buried on Sunday morning"?—Yes.

391. In answer to a question before the Royal Commissioners, "Before they fired, did you hear anybody give an order;" did you not answer "No"?—I was asked that question, and I said "No."

392. In answer to this question before the Royal Commissioners, "You say the soldiers went back and fired; did you hear anybody say anything before they fired;" did you answer "No"?—I answered "No" to that.

393. In answer to a question before the Royal Commissioners, "You are certain you heard nothing said to the three men who fired by any soldier before they did fire;" did you answer "No, nothing was spoken; I did not hear"?—My answer was, "If anything was spoken, I did not hear." I said that to the Commissioners, and I say so now.

394. In answer to a question before the Royal Commissioners, "You cannot say if Ensign Cullen went or not" (meaning down to the grass piece at the firing); did you answer "No"?—I did say "No" to that question.

395. Before the Royal Commissioners were you asked the question, whether "You were nearer than Anderson;" did you answer "Yes"?—I did say so.

396. In answer, before the Royal Commissioners, to a question, "Who gave the order to fire?" did you answer, "I don't know"?—Yes, I made that answer.

397. In answer, before the Royal Commissioners, to a question, "Who ordered the men to be shot; not Mr. Cullen?" did you swear "Mr. Cullen did not order the men to be shot"?—Yes, I made that answer.

398. In answer, before the Royal Commissioners, to a question, "Mr. Cullen did not order them to be shot;" did you answer, "No, he ordered to flog"?—Yes, that was the answer I made.

399. In answer, before the Royal Commissioners, to a question, "Have you seen the graves since?" did you not answer, "No"?—Yes, I made that answer.

400. Was the following question put to you before the Royal Commissioners, "You said, how many prisoners there were;" did you answer, "Three." Were you further questioned, "Do you know the names?" did you answer, "One of them." Were you asked, "What was the name?" did you answer, "John McCall"?—I did say three; and I was asked the other questions, and made those answers.

401. Were you not asked the following question by the Royal Commissioners, "When did you first tell this story after it had happened; to whom did you first tell this after you had seen it; when did you tell it to any one afterwards?" did you, to this question, answer, "I tell it to nobody except Manning"?—Yes, I did say so.

402. Were you further asked by the Commissioners, "Never at all" (meaning, never telling this story at all); did you again answer, "No, I never told anybody, only Mr. Manning"?—Yes, that was what I said.

403. Were you again asked by the Commissioners, "You say this was Saturday, and you saw all you have been telling us; when did you tell anybody you had seen it;" did you answer, "I tell nobody"?—Yes, I said so.

404. Can you tell about how many people were there on that day when you say the soldiers all came to the post office; were there near 500 or 1,000?—No, not 500 or 1,000; I cannot tell how many.

405. Were there so many that you could not count them?—No.

406. Did you go further from the shop than to the Iron Bridge on the day when you say soldiers came to the post office?—No.

407. To the best of your knowledge, did Manning ever leave the shop and post office at all on the day on which you say the firing took place while the soldiers were there?—No; only when the firing, he went to the piazza to look.

408. Are you in Manning's employment now; how long have you been so?—I am; and I have been about 22 months.

409. Are Cecilia Robinson, Abraham George Donaldson, now, or have they been lately, in Manning's employment; if so, how long have they been so?—I am in his employment now; Cecilia Robinson is not; she was during the martial law.

410. Do Duany and Bryan and Cyphus often come to Manning's shop?—Yes.

411. Has Cecilia Robinson been in Manning's employment since martial law, and up to what time this year?—She was in his employment during martial law; but I do not recollect when she leave.

412. When and where, and at what place, were you served with your summons to attend this court?—At first, at Plantain Garden River, on Sunday; the next, at Morant Bay, on Tuesday;—no, Wednesday morning, not Tuesday.

413. Has she (Cecilia Robinson) been in Manning's employment this year, and at the same time with you?—(*Question withdrawn by Prisoner.*)

414. At what house were you served on the Sunday to come here?—At the Plantain Garden River post-office.

415. Was Manning present when you were served on the Sunday at Plantain Garden River post-office?—Yes.

416. Is that shop or post-office ever used as a meeting-house for people to come to on Sunday; has it ever been so used, to your knowledge?—No, it never been used so at all.

417. Do you go to Manning's chapel, and hear him preach?—No. Has he a chapel?

418. Do you go to church or chapel, or meeting house?—I never go to meeting-house; I go to Golden Grove church.

419. Do you know, yourself, if Manning holds,

or

or used to hold, meetings at night anywhere in St. Thomas-in-the-East?—Since I knew him, I never saw him hold any, or go to any in the night.

420. Were you present at any meeting held by him at night in July 1865, at or near Golden Grove or Duckenfield?—No.

421. Do you know, yourself, if Manning preaches anywhere, or used to preach anywhere, in St. Thomas-in-the-East?—Hard for me to tell; for I do not know who make him a preacher.

422. *By Prosecutor.*] Did you at any time before or after the 21st of October last year, identify Ensign Cullen, and did you on that occasion point him out from a number of other officers with him; were all at one and the same time presented to your view; and if so, state when and where?—I saw him with Mr. Williams and Mr. Georges. I point him out at Spanish Town, when there were other officers with him altogether; last March. What I said about Mr. Williams and Mr. Georges means, the last time I saw him at Plantain Garden River.

423. When you said before the Royal Commissioners that you did not see Manning there at all, did you mean that you did not see him at the post-office that day at all, or at the place where the men were shot?—

The Prisoner objecting to this question, the Prosecutor withdraws it.

424. Did you see Manning on the 21st October last at the post-office?—Certainly.

425. Did you see him anywhere near the place where the men were shot on that day?—

The Prisoner objecting to this question, the Prosecutor withdraws it.

426. What then did you mean when you said before the Royal Commissioners that you did not see Manning "there" at all?—I meant where the men were shot.

427. When you said to the Royal Commissioners that you told nobody, what did you mean?—I meant I told Mr. Manning at the same time; but afterwards I speak to strangers.

428. Up to the time of giving your evidence before the Royal Commissioners in Spanish Town, had you spoken about the shooting of the three men to any other person than Manning?—I do; to strangers.

429. *By Court.*] Did you know Ensign Cullen's name before you went to Spanish Town to give evidence. Had you heard his name mentioned during martial law at Golden Grove?—I know his name at Plantain Garden River. I know his name the day he came from Manchioneal; before I went to Spanish Town. I am not certain whether I heard his name at Golden Grove.

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430. You told us yesterday you saw the bodies buried; and you said to-day that you told the Commissioners at Spanish Town that you were not there; how came you to say one thing to us and another thing to them?—I was at the post-office on the Sunday they were buried. I meant I was not at the very spot; I thought they mean the very spot.

431. You said Dr. Morris ordered the three men to be shot; where was Ensign Cullen when Dr. Morris said that?—He was at the post-office. I not certain whether Ensign Cullen hear, but I heard it, and I know he was at the post-office. Dr. Morris was standing at the door; Ensign Cullen was not close; far away in the same office.

The Witness was directed to show in Court about how far Ensign Cullen was from Dr. Morris, and on doing so, the distance was found to be six paces and a half.

432. At this time, how near were you yourself to Dr. Morris?—Near enough.

The distance was shown in Court, and found to be three paces and a half.

433. How far from Dr. Morris were the soldiers who were told to shoot the three men?—They were in the piazza.

434. Where were you standing at this time?—In the shop. Dr. Morris stood at the shop door.

435. You said Dr. Morris was at the shop door, and the soldiers in the piazza; show as near as you can how far they were from one another?—Dr. Morris stood on the shop floor, at the door; the soldiers were at the bottom of the steps, inside the piazza.

436. When Dr. Morris ordered the men to be shot, can you tell us in what tone of voice he spoke?—He speak plain enough, that the soldiers might hear what he said.

437. Where was Ensign Cullen when the soldiers fired at the men they shot?—Ensign Cullen was part of the way; not so far down as I was, or as Dr. Morris.

438. Was Dr. Morris sick, with his head tied up, at the time you say he gave the order?—I heard he was sick, but I cannot say if his head was tied up or not.

439. At which door did Mr. Morris stand?—It was at the shop door; the middle door, at which everybody go in to buy, and for letters.

[The Witness withdraws.

Twelfth Witness for Prosecution.

ROBERT SPEED, Constable at Holland Bay, being duly sworn, is questioned by the Prosecutor.

R. Speed.

440. *By Prosecutor.*] Do you remember the martial-law time. Where did you live at that time, and what was your occupation?—Yes, I remember. I lived then at Holland Bay, and I was a constable.

441. Did you go to the post-office at the Iron Bridge during martial law, and when?—I went 21st October last year to the post office.

442. With whom did you go?—Mr. Duany, at the lighthouse; the light-keeper.

443. When you were there did you see any prisoners?—No; I was there half an hour before the prisoners came in.

444. What did you see when the prisoners came in; tell all to the Court?—When the prisoners come in, the soldiers them all happy when the three prisoners came in; the soldiers asked the three constables what they brought the prisoners for; says to them, they brought them to be flogged; well, they ask them what them do; says, steal nails on the property. At the same time the doctor and the officer was in Mr. Manning's

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ning's little closet, and when the doctor and the officer come out, they asked constables again what them brought the prisoners for; asked them what they done; say, steal nails on the Duckenfield Estate; the doctor and the officer ask Mr. Manning if he got any twine to make cat; Mr. Manning reached some twine and gave it to the doctor; the two, doctor and the officer, were together; then they getting about to make the cat; me asked Corporal Hunter what they going to do with the prisoners; afterwards I see the doctor and the officer come out outside, walk the bridge way; I do not know what them say, but the two of them were together. After they come back from the bridge they done away with the cat; they stop making the cat. "Corporal Hunter," says I to Corporal Hunter, "what they going to do with the prisoners;" and I saw them order, the doctor order, to loose the prisoners from where they tied under the shed at the bridge, the shed under Mr. Manning's shop. After they loose the prisoners, then they take them out to be shot; and Mr. Manning said to them "Much please take them out of sight a little;" and they take them down a little more from the shop way; I stand for a while or two; I had been sitting down on a box, and I heard the report of the guns, and I still sitting down, and my mind tell me the three prisoners were shot. I did not stay very long where I sitting, for a minute or two I budge; I go where I heard the report of the gun; I did not reach quite down, but I go where I could see the prisoners were shot. I see the three prisoners tied and dead; tied to the bamboo fence, their backs to the grass piece and their front to the road, and one of them the brains hang forward; after I not stop. I lead my horse and peep at them; after, I get on my horse and wheel round and ride over the bridge to Holland Works, and go down to the bay; this was on the 21st October last year.

445. Who brought the prisoners to the post office; if you know the names, state them?—One man named old Wills, and one Colson, and one is the book-keeper at Duckenfield, I forget his name, lately come to the parish; the book-keeper's name is Bryan.

446. What are the names of the prisoners. If you know, mention them, or such of them as you know?—Well, I did not know. I see them when they come in, but I not acquainted with them; they live at Duckenfield; I live at Holland Bay.

447. What sort of soldiers were they you saw at the post-office that day?—Black soldiers most; some white soldiers; very few.

448. Did any of the prisoners get away before they came to the post-office?—The constables tell me one got away, but I do not know of my own knowledge; I saw three come in.

449. To whom did the constables speak when they brought the prisoners?—They spoke to the Doctor, and the officer, and the soldiers likewise.

450. Who is the officer you have been speaking of; do you know his name?—I may know his name, but I forget it. Corporal Hunter told his name, and I know his face.

451. Would you know the officer again if you saw him; if so, stand up and see if he is in this room, and if he is, point him out?—Yes, I think I should. (*Ensign Cullen is here identified by Witness.*)

452. Who took the prisoners from the post-office to the bamboo fence?—The soldiers.

453. Did anybody besides soldiers go; if so, state who?—Well, I really cannot tell.

454. Did you see the officer come back to the post-office after the three prisoners were shot?—Yes; him and the doctor both.

455. *By Prisoner.*] Did'nt you know, where the officer was sitting in this room, before you came into this room?—No, I don't know, because when I outside I can't know where the gentlemen sit.

456. Since you have been up here, and standing from day to day in the piazza, have you not seen the officer coming into this room?—I have seen him; if I say I have not seen him I lie.

457. Have you been told where the officer was sitting, and that he always sits right facing you when you give evidence?—No; nobody at all ever tell me that; I take the Bible for that.

458. Has the officer often been pointed out to you?—No.

459. Did you not often have the opportunity of hearing the name of the officer during the rebellion and while he was in St. Thomas-in-the-East, and since you have been up here?—I often hear the name in St. Thomas; we know the name in St. Thomas.

460. Did not all the witnesses see the officer coming into this room, and do not all the witnesses outside know where the officer was sitting in this room?—Well, they may see it, but they never tell me where he sit; I cannot say if they know where he sits.

461. Have you ever seen the officer in white clothes before?—Since I came here on Monday I keep seeing him in white clothes. I do not notice whether he change his dress or not, but I know him.

462. Did you ever give evidence, on oath, in Spanish Town in this matter before the Queen's Commissioners, or before any magistrates in St. Thomas-in-the-East, on oath?—I did not give evidence in Spanish Town on oath; and about this business I never gave evidence before any magistrates. I was examined at Golden Grove, but I did not take oath.

462*. Did you know that gentlemen from the Queen came down to St. Thomas-in-the-East, to inquire about these matters, and did you ever go before them and kiss the book to this story you have told to-day?—At the time Duany, the light-house-keeper, and the other persons went to Spanish Town, I was in the bay, sick. The doctor was attending me at the time; two doctors was attending me at the time.

463. During what months were you sick?—I cannot exactly say the month, but it was the same time Duany went to Spanish Town; I was in my bed. The policeman pass, say so, that he was going for Duany.

464. Do you not know that this gentleman, Mr. Lewis, was about St. Thomas-in-the-East, for the Queen's Commissioners, inquiring about all that was done during the rebellion; did you ever go to him to give any information as to this story?—The only time I ever gave information was at Golden Grove, last month. I do not know whether the gentleman (Mr. Lewis) was there; I do not know his face; (*the Witness then got up and identified Mr. Lewis as having been at Golden Grove and added*), "Face favour face, I cannot say whether it was him or not.

[The Court adjourns at Two p. m., till Ten a. m. on Monday, 22nd instant.

Eighth Day, 22nd October 1866.

On Monday, the 22nd day of October 1866, at 10 a.m., the Court reassembles, pursuant to adjournment; present the same members as on Saturday last, and proceeds with the Cross-examination of Robert Speed.

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465. *By Prisoner.*] You swore on Saturday that you could not tell the months in this year, when you were so sick, with two doctors attending you. How is it you managed to pick out the 21st October last year, as being the exact day, month, and year, all this you spoke of happened?—At the time I was sick I could not exactly know the months, but I carry the other day in my head.

466. Can you read and write?—No, neither.

467. Did you, during last year, take any memorandum of the date and the month you speak of, or did you get any person to do so for you during last year?—No; I did not get anybody to do so.

468. What date of the month was last Saturday week, the Saturday week before yesterday?—I did not much particular that.

469. What was the date of the month of last Saturday, day before yesterday?—I do not know; I did not particular the day of the month of Saturday, but I was very particular about the date last year, the 21st and 22nd; 21st was Saturday and the 22nd was Sunday.

470. As a constable, you surely know on what day of the week and date of the month martial law left off; tell the Court now?—I think it was the end of October, but I can't say the day of the week or month.

471. You were a constable; tell the Court on what day of the week and date of the month the rebellion broke out at Morant Bay?—I think on a Saturday, but I do not know the day of the month.

472. You were a constable; on what date of the month and day of the week was Mr. Hire murdered at Amity Hall last year?—The rebels went on Thursday night and day-broke Friday morning; I do not know the date of the month.

473. Look among the gentlemen present in this room, and point out to whom you told your story last month at Golden Grove or elsewhere in St. Thomas-in-the-East, and show the gentlemen to the Court?—

The Witness identifies Mr. Jackson as one of the gentlemen, and thinks Lieutenant Colonel Daniell, the Prosecutor, was another.

474. Were you a constable during martial law, and all the time, or whilst the Queen's Commissioners, Mr. Gurney and Mr. Maule, were inquiring into all these matters this year in St. Thomas's-in-the-East?—I was a constable all the time of martial law, but I do not know the gentlemen; I live out of the way and they may pass and I not know; Holland Bay Wharf busy there, and I mind wharf and not go away.

475. Were you not aware that Mr. Gurney, one of the Royal Commissioners, was at Bath on a Thursday, Friday, and Saturday in the month of February of this year, examining and inquiring into all these matters, and were you not aware that all the constables went to be examined?—Well, very like, but I do not know; Holland Bay is a place out of the way. I do not know the constables went; the constables at Holland Estate would have made it known to me.

476. Did you not know or hear that in March this year Mr. Maule, one of the Royal Commissioners, held a Court at Golden Grove; why did you not go and tell him what you have told this Court?—Well, I really cannot say; if not done on Saturday when the people go to market at Golden Grove, I not hear; I not leave the bay unless I have great occasion.

477. How far is Duckenfield Estate from Holland Bay; how far is Holland Bay from Golden Grove?—About a mile from Duckenfield Estate to Holland; there is two road; one walking road by the canal is shorter, but the waggon road is about a mile and a-half. From Holland Bay to Golden Grove you may say three miles.

478. Do you mean three miles round the main road, past the post-office?—I mean a mile and a-half to the post-office; from Golden Grove to the post-office about a mile and 20 chains. I never see it run; I just judge it.

479. Is Holland Bay part of Holland Estate?—No; different owner.

480. What distance from Bridge to Golden Grove?—About a mile and 20 chains, I said.

481. Does Holland Bay join on Holland Estate; does Holland Estate join on Duckenfield or Golden Grove?—Yes; and Holland Estate joins on Duckenfield.

482. Did you go often to Garden River Post-office by the Iron Bridge on Saturdays and other days, and have a talk?—No; I never have no time; I never leave unless I have great occasion; my employer say I must not leave the Bay.

483. You are a constable; don't you know by your experience that witnesses in your class of life know nothing of dates, time, or distance, with any certainty whatever?—Well, sometime they make a mistake; it is allowed to any man to make a mistake. I cannot say positively what I don't see.

484. Will you positively swear that you, a constable, did not hear or know the same Mr. Maule was at Golden Grove in February or March this year, with or without Lawyer Lewis, to inquire into all these matters?—Well, the policeman nor any man never tell me; if they had called the constables, I would have gone.

485. Will you positively swear that you, a constable, did not know or hear that the same Mr. Gurney was at Golden Grove in February or March this year, with or without Lawyer Lewis, to inquire into all these matters?—No; it might be, but I never hear it.

486. You say that at the time soldiers asked what prisoners brought for, the officer and doctor were in the little room; will you swear that you could see the officer and doctor in the little room from the place where you sat down at that same time?—Yes; when I pass I see them in the little closet, and I then went by and sat down; but I could not see them from where I sat down.

487. How long were you sitting down from the time you came in till you went away?—Well, I had no watch; but about an hour, I think.

488. Can

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488. Can you tell the Court about how many people, soldiers and all others, were there on this day of which you speak as being Saturday, about the post-office and shop; could you count them?—No, I cannot count them; I did not have such a thought as count them.

489. Can you tell the Court, by guess, how many were there altogether; were there 500, or 300, or 1,000, or how many do you think?—No, I do not think they come to 100.

490. Was it market day; and do plenty of people from all about Hordley, Duckenfield, Golden Grove, and the other estates go there?—It was a market day, but very few people there, because they afraid to go to market, because the soldiers about.

491. Do you know that before, during, and after that same week of this same Saturday, plenty of different soldiers and volunteers were all about from place to place, round by Iron Bridge?—Yes, I know it.

492. Can you tell the Court what time of day it was when you went there, and what time of day it was when you came away?—Well, I keep no watch, but I leave Holland Bay about 9 o'clock or 10 that Saturday. It is no distance, and if I leave the Bay at 9 o'clock, I get to the Bridge about 10. I keep no watch; I cannot tell what time I go away.

493. Were the gentlemen whom you pointed out just now in this room the first persons to whom you gave information about all this; did you ever kiss the Bible before about all this?—Yes, those gentlemen were the first; I never kiss the Book before about this.

494. Do you know Manning; if so, how long have you known him; are you and he great friends?—I know him long enough, about 20 or 30 years; we are not great friends.

[The Witness withdraws.

Thirteenth Witness for Prosecution.

JOHN HAMILTON, Shopkeeper at Holland Estate, being duly sworn, is questioned by the Prosecutor.

J. Hamilton.

495. *By Prosecutor.*] Do you remember martial law time; where did you live at that time, and what was your occupation?—I remember it; I lived then on Holland Estate as shopkeeper.

496. Can you read and write?—A little; both.

497. Do you remember anything particular happening during martial law; and if so, state to the Court what you saw yourself with your own eyes?—Saturday, 21st October 1865, I was on my way from Holland Estate to Golden Grove; as I got to the Iron Bridge, I saw the soldiers there; I stopped with them awhile, and I saw constables brought three prisoners from Duckenfield, and I saw Ensign Cullen step from under the shed of Mr. Manning's shop, and go up to Bryan on the main road; what they say I did not hear. As he turned back from the road to the store, I mean Ensign Cullen, I heard him say, "Have the men tied and flogged." Whilst the men were tying the prisoners, he went into Mr. Manning's hall, and I saw Dr. Morris come out and go up again to Bryan; what they say I did not hear. As Dr. Morris turned back, he said, "Loose them, and take them out one by one" (Ensign Cullen heard this; he was under the shed); and so they did, and took them down a little below the shop. After they take them down, they put them to the logwood fence of the grass piece; where I was, I could not see how they were tied; I did not see them again. I saw the soldiers on the opposite side of the road to the logwood fence; I saw when the soldiers fired the guns. Dr. Morris took one of the rifles from the men, and he fired the last volley. They came back to the post-office, Dr. Morris and Ensign Cullen, and asked for a bit of soap and a towel, and go to the river for a wash. I went away before they came back from the river.

498. You say that Ensign Cullen heard when Dr. Morris said, "Take them away one by one;" did Dr. Morris say anything more at that time?—Nothing more.

499. You say that they put the prisoners to the logwood fence; are you sure it was logwood fence where they put them?—Yes; the fence is a logwood fence, but the place they put them is vacant; the logwood is dead, and they tie the place with bamboos.

500. Did you go down to the place at which you say you saw the soldiers fire the guns; and what soldiers were they?—I did not go down there; I do not know them—black soldiers.

501. Do you know the names of the constables who brought the prisoners from Duckenfield; if so, tell the Court?—George Colson and Cyphus Wills.

502. Do you know the names of any of the prisoners; if so, state them?—I know one by the name of Walton.

503. You say Colson and Wills were names of constables who brought the prisoners; were these all the people who brought the prisoners?—Bryan, a book-keeper, I suppose he is.

504. You say they took the prisoners down the road; whom do you mean by "they"?—Soldiers took them down the road.

505. Did any one go with the soldiers; if so, state the names?—Nobody go with them, that I know of.

506. From where you stood or sat, when the soldiers fired, could you see the prisoners?—Could not.

507. Where was Ensign Cullen when the soldiers fired?—He was down with them that fired.

508. Do you know Ensign Cullen; if so, stand up, look around the room, and point him out if he is in this room?—(*Witness identifies Ensign Cullen*).

509. How do you know Ensign Cullen; did you ever speak to him at any time, and when?—On 22nd October, Sunday, I saw him at Golden Grove, and he gave me a pass there.

510. *By Prisoner.*] You say Ensign Cullen was down with the soldiers that fired; where were you at the time the soldiers fired; you swore a little time ago that from where you stood you could not see the prisoners shot, and that nobody you knew of went with the soldiers?—I under the shed of the shop when they fired. I did state that Dr. Morris and Ensign Cullen went down with the soldiers; I did state that.

511. Will you positively swear that from where

where you were standing under the shed, you did see the prisoners tied and the soldiers shooting them, at the spot you say they were shot?—I could not see the prisoners; I saw the soldiers when they fired. *J. Hamilton.* 22 October 1866.

512. After you went to the shop, did you go near at all to the bridge before the firing actually took place, or did you remain at the shop?—I remained at the shop.

513. Were you examined before this day on oath as a witness, either in Spanish Town or anywhere in St. Thomas-in-the-East?—Not on oath before to day.

514. Do you and all the other witnesses against Ensign Cullen come from the same district in St. Thomas-in-the-East?—I suppose so; I not certain to that.

515. Were there plenty of people flogged or shot about that district?—I do not know how much.

516. Were you or any of your friends or connections flogged?—No, none of my friends, nor myself.

517. Where were you actually standing at the time when you say Dr. Morris spoke; and at what distance were you from Dr. Morris, when you say he said "Loose them one by one"?—I was under the shed; and he just returned from the main road, coming under the shed.

518. Did you go amongst the soldiers at all, at the same time you say the soldiers took the prisoners down, or did you remain behind at the shop?—I remain at the shop.

519. Were there people standing all about between you while you were at the shop and the place where the soldiers were firing?—The place was crowded with soldiers; I did not observe any other people there.

520. Did you swear just now that you did not observe whether there were any other people there or not?—No.

521. Will you, positively, on your oath, before this Court, swear that no other people at all were between you when you were standing at the shop and the place where the soldiers were actually firing; or are you unable to say?—I did not observe whether there were other people or not; because the soldiers were so much, I was taken up with observing them.

522. What number of chains do you think were between the spot at which you stood at the shop and the place where the firing actually took place?—I think it is about three chains or more.

523. Were you standing on the ground quite close to the shop under the roof of the shop, by the steps into the shop, or by the posts of the roof?—Between the steps and the posts.

524. Is there under the roofing of what is called the piazza, in front of the shop, any flooring at all? Is not all bare ground level with the ground outside?—All ground.

525. Can you tell how high off the ground is the flooring of that shop itself?—I cannot tell,

526. *By Court.*] Can you state the exact spot where Ensign Cullen was when the soldiers fired?—I cannot.

[The Witness withdraws.

Fourteenth Witness for Prosecution.

SOPHIA BARTLEY, residing at Dalney, being duly sworn, is questioned by the Prosecutor.

527. *By Prosecutor.*] DID you know Richard Walton?—Yes. *S. Bartley.*

528. Do you remember the time of martial law; where did you live at that time?—I do not remember the time it begin, but it was in October. I lived at Dalney then.

529. Where is Dalney?—In St. Thomas-in-the-East.

530. With whom did you live?—Living at Richard Walton's house.

531. Did you live with him as housekeeper?—Yes.

532. Where is Richard Walton?—I heard he was shot.

533. When did you see him last?—From the Thursday, when he went away to Mrs. Annie Walton, till the Saturday, when I heard he shot.

534. Have you ever seen him from the Thursday evening you say he went away; and when was that Thursday?—No, I never see him since that Thursday; it was in October.

535. What October was it; in what year?—I do not know the year. Last year October.

536. Did he leave any children by you, and how many?—Three.

The Prisoner declines cross-examining this Witness.

[The Witness withdraws.

Fifteenth Witness for Prosecution.

GEORGE GRANT MANNING, Shopkeeper and Postmaster at Plantain Garden River, being duly sworn, is questioned by the Prosecutor.

537. *By Prosecutor.*] Do you remember the martial law time; where did you live at that time, and what was your occupation?—I remember the martial law time. I lived at the shop near the Suspension Bridge, on Duckenfield; and I was then shopkeeper, also postmaster. *G. G. Manning.*

538. How long before the martial law did you live at that place?—Upwards of 11 years.

539. In what parish and county is your shop and post-office, and over what river is the bridge you speak of?—I am in the county of Surrey, parish of St. Thomas-in-the-East, and the bridge hangs over the Plantain Garden River.

540. Do you remember a detachment of soldiers coming to that shop of yours, and when was it?—I remember on 21st October, a Saturday morning, between eight and nine o'clock, Ensign Cullen, and his colleague, Dr. Morris, with a company of black soldiers, halted at the shop. I met Dr. Morris at the east door, which led him into my room. He then said, "I'll go no further." So saying, he sat on the table, and laid on his back afterwards. I brought him two pillows, which he put under his head. I left him. Ensign Cullen then met me in the other part of the shop; he then said, I forget whether he said brother officer or friend, and asked me what assistance I could afford him to take him away, as he was suffering from

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from fever. I said, I couldn't, for the only vehicle I have is broken. I went back to Dr. Morris, and said, I thought some Florida water might do him good. I brought a bottle of Florida water, with which he washed his face and put some on his head. He then asked me if I could get him some tea. I desired the cook to get him some green tea.

541. After he had had the tea, or while he was drinking it, what happened?—There was a noise. Prisoners, prisoners, a while after that; many of the soldiers said one of the prisoners escaped; the soldiers ran in many directions after the prisoner; did not succeed in capturing him. I then saw three men, whom I took to be constables; had three men that they said were prisoners. They came as far as the middle door of the shop; just opposite in the road. I saw Ensign Cullen with the three constables and the prisoners; they spoke to Ensign Cullen, but I could not hear what they were saying. Soon after, several of the soldiers said, the men are to be catted; one or two of the soldiers came into the shop with me (I was in the shop then) and asked for twine, to make a cat. I took a ball of twine off the shelf and gave it to one of these men; he took off what he wanted; went outside making the cat. Just at this time I saw Dr. Morris, who was lying on the table all the while, went out to Ensign Cullen. Ensign Cullen was still in the road, opposite the door of the shop. He whispered to Ensign Cullen; then the soldiers, many of them, said the men are to be shot; the doctor say they are to be shot. These three prisoners, from the time they came in, were tied to the posts; one of the posts that supports the shed of the shop. One or two of the soldiers went up to loose the men; in doing that, one of the prisoners attempted to say something; the man that was loosing them said to him, "Hold your tongue; how dare you to speak? You should say your prayers since last night."

[It being now 4 p.m., the Court adjourns till 9.30 a.m., 23rd instant.

Ninth Day, 23rd October 1866.

On Tuesday, the 23rd day of October 1866, at 9.30 a.m., the Court reassembles pursuant to adjournment; present the same Members as yesterday, and proceeds with the examination in chief of George Grant Manning.

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542. *By Prosecutor.*] What further did you see and hear; proceed to tell the Court all that you know of your own knowledge?—During the time the prisoners were tied to the post the soldiers that I saw in front were all in a glee; they laughed and jeered at the prisoners, and made use of very indecent language. They said, in a few moments "their souls would fly out," applying very vulgar expressions. The men, that is the prisoners, were removed from the post; then I saw the soldiers, the prisoners, Ensign Cullen, and Dr. Morris, all marched off eastward on the road; I supposed to a distance of 60 or 70 yards; I am not certain, but thereabouts; I never measured the distance; they stopped there. A little time after, I saw one of the prisoners tied to a bamboo fence; I saw also the other two men tied to the same fence. I saw then three heads of the three men who were tied to the fence. I heard the word "fire" and the discharge of the rifles. I saw the head of one man bow down forward after the discharge of the rifles; I heard another discharge of rifles, a second head bowed just in the same manner; a third discharge, and the last man's head fell in the same manner. A little time afterwards, I saw Dr. Morris discharge a rifle at one of those men that were shot. Of course I saw the presentation of the rifle to the fence where these men were shot. Afterwards, the doctor came up to the shop, also Ensign Cullen; both then moved about. Mr. Duany said to me, "The doctor asks for a towel and a bit of soap, for he wished to have a bath;" I gave both soap and towel; about a quarter-of-an-hour afterwards, I saw Dr. Morris ascend from the river; when he came in front of the kitchen he sat down, wiped his legs and feet, buttoned on his leggings, and then they all moved about; I did not notice anything particular after that.

543. How long do you say you have been living in that shop?—Upwards of 11 years.

544. Had you been living in that neighbourhood before you lived at that shop; and for how long?—I was living in that neighbourhood before I lived in that shop; I have been living upwards of 20 years in the neighbourhood; I remember I came there in 1846.

545. Do you know the names of the people who brought the prisoners to the post-office; if so, state them?—One person is called Bryan, the other, Wills; the other, Colson; I do not know their first names.

546. Do you know the names of the prisoners; if so, state them?—Richard Walton, Miles the other, and M'Call, I think.

547. You say the prisoners were taken "eastward;" explain to the Court what you mean by eastward?—By eastward, I mean windward; the road leading to the Lighthouse is called eastward; it is the only road to Holland Bay.

548. Is it straightway down from your store, without turning to go over the bridge?—It is straightway down; you do not go over the bridge, but keep southward.

549. Did Ensign Cullen go the whole way down with the soldiers and prisoners?—I cannot say.

550. Where were you standing when you saw the firing, and could you see the bodies of the prisoners from that position?—I was standing in the shop at the threshold of the door; I could not see the bodies of the men, but I saw their heads.

551. You say you were standing on the floor of the shop; at which door were you standing?—The middle door.

552. Can a person standing upright at that door see an object, say the head of a man, standing at the place at which you say the prisoners were placed?—No, he cannot see.

553. How then did you see it from that place?—I stooped (*the Witness then proceeded to explain*); standing

standing upright I could see nothing windward of the shop; that is, I could see nothing on the road leading to Holland Bay, but by stooping just like that (*described by bending slightly forward*), I could see distinctly from two yards to 200 yards along the same road.

554. What obstructs the line of sight when you stand upright at that door?—A logwood fence, southward.

555. What made you stoop; what prevented your seeing without stooping?—The shed in front of the shop.

556. Then, by stooping, did your eyes clear the shed?—The shed then was no obstruction to my sight.

557. How and where were the soldiers standing when they fired?—On the opposite side of the three prisoners that were tied to the fence.

558. Which do you call the opposite side; was it the same side as your shop?—The same side as my shop; that is the left-hand side of the road.

559. Then does the Court rightly understand that the prisoners were tied to a fence on the side of the road, opposite to your shop?—The prisoners were not opposite my shop, but the direction where they were was opposite my shop, because it is the right-hand side of the road.

560. Was there any attempt to shoot the prisoners immediately in front of your store; and why was it not done?—I had heard, that is, it was talked among the soldiers, that the men were to be shot opposite the shop; I then said, "Oh, don't shoot them there;" I did not appeal to any particular person, but just said those words.

561. You say you heard the word "fire;" do you know who gave that word?—No, I do not.

562. Are you in any way related to any of the prisoners, or constables, or other witnesses, so far as you know who those other witnesses are?—To no one that you name.

563. Did you remain at your shop until the next day?—I did.

564. Did you see a soldier the next day, and did you say anything to him; you need not tell what you said, but only whether or not you spoke to him?—I saw a black soldier the next day, and I spoke to him.

565. In what direction did that soldier go; towards what estate?—Amity Hall; that is, he went over the bridge, and that is the first place he would come to.

566. What became of the three dead bodies of the men who were shot?—They remained there up to next day; about 10 o'clock in the morning they were yet there.

567. Were they buried; and where did the people come from who buried them?—About that hour, I saw four or five men from Amity Hall, standing in the direction of the blacksmith's shop; they had hoes and pickaxes; I advanced to Wedderburn, one of the men, who told me black soldiers told them to bury the men; I then went away; I saw nothing more. I did not see the men buried.

568. Did you see the rising and falling of hoes any time that day, Sunday?—No, I could not, for I was in Bath the other part of the day; I went away to Bath, and did not return till sunset.

569. Did you see the bodies when you came home in the evening?—No.

570. Do you think you will know Ensign Cullen if you see him; if so, stand up, look around the room, and point him out if he is in this room?—(*Witness identifies Ensign Cullen.*)

571. Are you quite sure that the three men who were shot were the three prisoners who were brought in that morning (21st October 1865), whose names you have already stated?—Quite sure.

572. By *Prisoner.*] Were you not summoned to appear before Mr. Maule, one of the Royal Commissioners, on 17th March 1866, at Golden Grove, and did you appear before him?—I was never summoned to appear at Golden Grove; I appeared before him at Morant Bay, to which place the summons directed me.

573. Were you examined as a witness on oath at Morant Bay on 19th March 1866, before Mr. Maule, one of the Royal Commissioners, and was your evidence then taken down?—I was examined on oath by Mr. Maule; I do not remember the date, but the evidence was taken down.

574. Were you not aware that Mr. Russell Gurney held Courts for the examination of witnesses in the month of February for three days at the town of Bath, and did you appear before him?—I was not aware of that, for I was not in St. Thomas'-in-the-East then; I think I was in Kingston at the time.

575. Was that the only one time you were examined before Mr. Maule at Morant Bay, at the temporary Court House, Mrs. Loague's lodgings?—That was the only time by Mr. Maule in St. Thomas'-in-the-East; but I was summoned to Spanish Town, before the Royal Commission, to identify Ensign Cullen and Dr. Morris; that is all.

576. Was it not only on the question of identity that you were examined in Spanish Town?—Yes; only to identify.

577. Did you ever swear before the Royal Commissioner, Mr. Maule, at Morant Bay, what you have sworn before this Court, viz., that a soldier who was loosing one of the men said, "Hold your tongue; how dare you speak; you should say your prayers since last night?"—I may not have sworn to those words.

578. You swear now, you heard the words "The men are to be shot; the doctor say they are to be shot;" was not all you said before Mr. Maule, at Morant Bay, that the soldiers said, "Oh, the men are to be shot;" did you then swear to the words now added on, "The doctor says the men are to be shot?"—I swore then, as I swear now, that the soldiers say, "The men are to be shot; the doctor say so;" pointed questions were then put to me, and I answered pointedly. It may have been that the words, "The doctor say so," were not added to the words, that "The men are to be shot," at the time when I gave my evidence before Mr. Maule.

579. Before Mr. Maule, at Morant Bay, did you swear (as you have done before this Court), that "Dr. Morris got up off the table, and went out to Ensign Cullen;" or merely that "Dr. Morris went outside"?—I swore that "Dr. Morris rose up off the table, and went outside to Ensign Cullen;" I believe that to be the substance of my testimony before Mr. Maule.

580. Were you asked the question before Mr. Maule, at Morant Bay, "Did you see Dr. Morris give any order?" Did you answer, "I saw him whisper something to Mr. Cullen?"—That question was put to me, and that was the answer I made.

581. Before Mr. Maule, were you asked the

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question, "Which of the officers gave the order to the soldiers to take them off (meaning the prisoners); did you answer, "I can't remember," and were you further asked, "Who gave the order to the men," and did you answer, "I can't remember?—Yes; those were the questions and answers.

582. Were you also asked, before Mr. Maule, "Where did Ensign Cullen stand" (meaning when the men were taken across to the angle of the road), and did you answer, "I don't remember?"—Yes; I have a recollection of that being put, and of that being my answer.

583. Were you also asked the question, "Who gave that order" (meaning to fire or shoot); did you answer, "I cannot say whose voice it was?"—Yes.

584. Were you not asked the question, "Then, when was this that Dr. Morris whispered to him;" did you answer, "It was when Dr. Morris whispered, that the attempt at calling was left off?"—Yes.

585. Were you also asked, "Was there no man standing with the ten men who were going to fire;" did you answer, "I had not such a clear view as to know whether the order came from the officer or serjeant, because there was a serjeant in the company; but I know Dr. Morris went up with the men?"—I never said ten men, pointedly; I only said about ten men, or perhaps more. I do not remember that the question put to me by Mr. Maule, was put in that way; but that was my answer.

586. Were you asked the question, "Then who gave the orders to the soldiers to do what they did;" did you answer, "I am under the impression that the orders came from him and Mr. Cullen;" and were you further asked, "But which;" and did you answer, "I cannot say?"—Yes; in both cases.

587. Were you also asked, "Before they fired, did you hear any orders given;" did you answer, "No," I did not hear the order given?"—Yes; but "order" was not exactly the word I answered to, I think; I did not exactly hear what was going on, either before or after, but that word "fire," I did hear distinctly, and that was what I intended to state to Mr. Maule; that if anything was said by officer, or by officers or by soldiers, that I did not hear; but the word "fire," that I heard distinctly.

588. Were you asked the further question, "You don't know who gave it" (meaning the order); did you answer, "No?"—Certainly, I said so, if the word "order" mean the word "fire."

589. In answer to a question, "You say you don't know, who the two others (prisoners) were;" did you answer "No?"—Yes.

590. Did you swear before Mr. Maule, that you knew only one of the men (prisoners) who were shot?—Yes, that is I only knew the men; the others I may have seen.

591. Are you sufficient of a military man to know whether the word "fire," would be such as would be likely to be used by an officer or soldier, under such circumstances as you mention?"—I am no military man, but I know the word "fire" is meant for the discharge of rifles or muskets loaded.

592. Did you ever, before Mr. Maule, swear that you ever saw Dr. Morris "ascend from the river, come in front of the kitchen, and sit down and wipe his legs and feet," or give any such account then?—I may have stated that; all that I said before the Commissioner was on oath. The evidence given before Mr. Maule was not so full as it is now; what I understood the evidence before Mr. Maule was, to get from me the real facts of the case, whether those three men were shot by the command of the officers; that is what I understood him.

593. You swear now, that the soldiers laughed and jeered at the prisoners, and made use of very indecent language; they said, "In a few minutes their souls would fly," applying very vulgar expressions; did you swear that before Mr. Maule?—I do not remember whether I did.

594. You say now, "I saw the soldiers, the prisoners, and Ensign Cullen, and Dr. Morris, all march off eastward on the road;" did you ever tell that before the Royal Commissioner at Morant Bay, in respect of Ensign Cullen at all, and did you not then swear that you "did not remember where Ensign Cullen was?"—I think I told Mr. Maule that "Ensign Cullen, Dr. Morris, and the soldiers, and the prisoners all marched off, and went eastward, all of them, down to the bamboo-fence, or opposite to the Bamboo fence; but whether Ensign Cullen went the full length of the distance, I could not say." I believe that to be the substance of that evidence, given to Mr. Maule.

595. Will you swear positively, "Yes" or "No;" did you make that statement, contained in the last question, to Mr. Maule, which you made here to-day?—I cannot say that.

596. Did you ever swear before Mr. Maule, "That you saw Dr. Morris discharge a rifle at one of the men" (the prisoners)?—I may have sworn to that; I am not sure.

597. Did you ever before Mr. Maule, give evidence of the separate and distinct bowings of the heads, or of bowings of heads at all, or any such particular account at all as you gave to-day?—I remember I told Mr. Maule, I saw the heads fall; but whether singly or collectively I cannot remember, that is whether the three heads fell together, or one after the other.

598. Did you swear before the Royal Commissioner, at Morant Bay, that you ever saw any men tied to the fence, or even that you saw heads of the men at all; or give any such account as you have given to-day?—My evidence, to Mr. Maule, was, that I saw the heads of the men; I did not see the tying of the men, but I did say they were tied.

599. Will you positively swear to this Court that you did give such evidence as you last stated, or is it merely that you don't remember if you then swore that?—My evidence may not be the same words; but this I know, whatever I said would have the same meaning.

600. On your oath before this Court, is it that you don't remember positively what you swore before Mr. Maule, or that you do positively, on your oath, know that you did swear before Mr. Maule all you have sworn here to-day?—I cannot answer the question.

601. Do you believe that all the evidence you actually did give before Mr. Maule is correctly published in the book, printed by the Queen's printers, this book *(pointing to a Blue Book, "Report, Royal Commission")*, as to witness's (Manning's) evidence on 19th March 1866, before Mr. Maule, at Morant Bay?

The Deputy Judge Advocate intimates his opinion that this question is inadmissible.

The

The Court is cleared for deliberation.

The Court is re-opened, and the prisoner is informed that the Court reserves its decision, and the prisoner is requested, after due reflection, to place before the Court, as briefly as practicable to-morrow, his reasons for thinking that this question should be answered.

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It being now 4 p.m., the Court adjourns till 9.30 a.m., 24th instant.

Tenth Day, 24th October 1866.

On Wednesday, the 24th day of October 1866, at 9.30 a.m., the Court re-assembles, pursuant to adjournment: present, the same Members as yesterday.

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The prisoner submits, in compliance with the request made to him yesterday by the Court, that he thinks it his duty to explain to the Court that he does not contend that this book, as a Blue Book, or as the "Report of the Queen's Commissioners," is strictly legal evidence, for the reasons, first, that no statute law, by which the Court is bound, makes it evidence; and, secondly, because in the absence of a statute, legal evidence can only be on oath. The question is framed with a special view of obviating any point arising as to the admissibility of the Blue Book or Report as a Blue Book or Report. The question is based on a far different principle of evidence, namely, that if any witness on oath in Court shows, to the satisfaction of the Court, that any printed, written, or oral statement produced to and read by him in Court, contains a true statement of what he said on another occasion in Court in respect to the same facts; that written, printed, or oral statement is, by virtue of his own oath before the Court, admissible and binding against him, and he can be cross-examined thereupon. The Court can then, for identification and otherwise, look at such printed or written statement which he so verifies on oath against himself, or hear that oral statement which he so verifies as against himself. This is a means, it is submitted, allowable for testing, in cross-examination, different statements regarding the selfsame facts by the same witness; the Court is thus enabled to test which version is correct, and also to test the credibility of a witness, who on oath swears to two different statements before two different tribunals on the same facts.

Thus, in a word, it is the oath of the witness which would make the statement legal evidence, and not the bare production of the Blue Book, or of the Report of the Queen's Commissioners.

He (the prisoner) is wholly unable to furnish the Court with any other means, in this respect, than perhaps the testimony of the shorthand writers, who were sworn to take down and report all evidence correctly, and who took down Mr. Manning's evidence as reported; they are now in England.

He did not anticipate that the Blue Book would be peremptorily excluded as a means of testing any witness whose name was furnished on the part of the prosecution, and whose evidence was therein published.

The Prosecutor objects to the Blue Book, as it is called, being received in evidence, or referred to in any way.

He leaves the point in the hands of the Court.

The Court is cleared for deliberation.

The Court is reopened, and the prisoner informed that the question is inadmissible, and cannot therefore be allowed to be answered.

The Cross-examination of George Grant Manning is then proceeded with.

602. *By Prisoner.*] You say you could see 200 yards along the same road by stooping at the shop; is that in a direct line from the shop to the bridge?—The road is not in a straight line, there is a bend; the bridge is not, I suppose, more than 60 yards from the shop. Any person coming from Holland Bay on the same road, I can distinctly see the head, and in some cases the shoulder, fully 200 yards off, should that person be coming towards the shop.

603. Don't you know that the road from your shop towards the bridge, and on towards Holland Bay, has a good bend or curve, like the part of a circle; can you see the 200 yards straight on this road?—I cannot see straight 200 yards along the road, but I can see persons over the fence at that distance on the road.

604. Is the spot from which you say you saw the soldiers fire, a clump of bamboos, just opposite the rails where you say the prisoners were shot?—Bamboos are all along the road on the left-hand side, there is no particular clump of bamboos opposite: what I mean is, that the bamboos opposite the place are not thicker there than anywhere else.

605. Were the soldiers standing by bamboos directly opposite and in front of the rails where you say the prisoners were shot?—I believe so.

606. Can you not positively swear whether it is so or not, if you know the fact?—Yes, to the best of my knowledge, I positively swear they were directly opposite.

607. You said yesterday you saw Ensign Cullen with the three prisoners and constables; that the constables spoke to Ensign Cullen, but you could not hear what they were saying. At this time where were you, the constables, and Ensign Cullen standing, so that you could not hear what was said?—I was standing in the shop, and Ensign Cullen and the constables were in the road.

608. Has not the logwood fence all along from your shop to the bamboo rails been cut down during this year (1866) repeatedly?—I know it has been cut once, but whether more than once this year, I do not remember. I know it is always kept trimmed, so as not to become bushy. I have been absent, from sickness, for three months during this year.

609. Were you not aware that Mr. Lewis, now in Court, was at Morant Bay, employed by the Queen's Commissioners to inquire into all these

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these matters; and did you see him there in March 1866?—Yes, that was the time I gave evidence to Mr. Maule.

610. Did you ever offer to mention, or mention to Mr. Lewis at Morant Bay, or elsewhere, the name of a single witness who could prove the truth of any of your statements about the killing of these three prisoners, or did you ever mention to him the name of Ensign Cullen as being in any way concerned in the shooting?—To the first part of the question I reply, that I cannot say; to the second part, that I may have done so.

611. Did Mr. Lewis, at Morant Bay, in March 1866, ask you if you knew what had become of three men, namely, Bell, M'Call, and Walton?—I have no recollection, on my oath, that such a question was put to me by Mr. Lewis.

612. On the day on which you went before Mr. Maule at Morant Bay, on the 19th March, did you not see Mr. Lewis in attendance on Mr. Maule, in the lower part of the Court House, Mr. Maule being upstairs?—Yes.

613. Now recollect yourself; did not Mr. Lewis then and there ask you about the killing of these three prisoners?—Yes, he did.

614. Did you then at that time and place mention to him one word about Ensign Cullen, as having been in any way concerned in the killing of those men?—I mentioned the circumstance; it must have been mentioned; that is, Ensign Cullen's name must have been mentioned.

615. Did Mr. Lewis further ask you then and there if you saw it with your eyes, and did you not reply, "I did not, as I was in my shop, but after the men were taken down, I heard the report of guns, and from that I believed they were shot, as I subsequently saw the graves where the men were buried"?—I could not have stated that to Mr. Lewis.

616. Thereupon Did Mr. Lewis reply, "that there had been too much hearsay evidence already, and your evidence was not material, as you did not actually see the men shot; but as you had been summoned particularly at the request of Mr. Payne and Mr. Morgan, you had better attend Mr. Maule;" whereupon you went upstairs to Mr. Maule, in company with Mr. Morgan?—I have no recollection of Mr. Lewis making any such statement to me.

617. Was that interview with Mr. Lewis the only one which you had with him in St. Thomas'-in-the-East on the matters now in question?—To the best of my recollection, that was the only interview I had with Mr. Lewis.

618. Don't you know that placards were posted all over your district, calling on persons to come and give evidence to Mr. Lewis about all these matters for the Commissioners?—I think I have seen one or two of these placards, but I cannot undertake to say that I knew them to be posted all over the district.

619. When you left your place for a week, did you know that you were being searched for by soldiers, in consequence of what you had said and done at the Stokes Hall meeting?—When I left my place the cause was this; I was told by two or three persons that they were going to arrest me (they, meaning the soldiers); and the same day about dusk, a man who had just got 50 lashes on his back, came to my place, and said, "Mr. Manning, fly for your life; the soldiers at Golden Grove (I suppose he meant those in authority; but those were his expressions), say you shall be shot." "Believe, he says, what I say is quite true, for they will be here in the morning for you early." Of course the last information bearing on the first, I went off. I did not then, nor up to this time do I know the cause I was sought for. What I have referred to took place on the Sunday, 22nd October 1865.

620. Was John Anderson, a witness, the man whom you state as having had 50 lashes on his back, and who recommended you to fly for your life?—The very man.

621. Did Anderson come to you at night or in the morning; and did you at once fly for your life in the night or in the day?—Anderson came to me at dusk on Sunday 22nd October; I went off that very night.

622. Was the John Anderson who recommended you to fly for your life the same John Anderson who was with you at the Stokes Hall meeting last year; now be certain?—I know that John Anderson was at that meeting, but not exactly with me; but he is the same man.

623. You say Anderson was not exactly with you. Now, did you see John Anderson at that meeting, in the room or house where the meeting was held?—I saw him there.

624. Is it true or false that you went to Bath on this same Sunday; the same Sunday when you say Anderson came to you at dusk; at the Golden Grove Post Office?—I object to the use of the word "false" in that question: with all respect to the Court, I think that word impertinent: I did go to Bath on that day, and had returned just about sunset.

625. Now did not John Anderson at the same time, when he recommended you to fly, tell you what you were charged with?—No.

626. Did you also see a man called Duany and others at that same meeting at Stokes Hall?—Yes, I think Duany was there; I think so.

627. At what hour of the day on this Sunday did you go to Bath?—I left, I suppose, about 12; between the hours of 11 and 12.

628. Don't you know Duany and Anderson, as well as yourself, addressed that same meeting at Stokes Hall?—I am speaking now to the best of my recollection. I do not think Duany did address that meeting; Anderson did, and myself also.

629. You were a deputy postmaster in St. Thomas'-in-the-East; tell the Court the exact distance from Golden Grove Post Office to Bath Post Office?—Seven miles; I think it is seven; but the name is Plantain Garden River Post Office, not Golden Grove.

630. Do you know that you bear the credit in your district of being a local preacher of the Baptist persuasion, in the Golden Grove District or elsewhere in St. Thomas'-in-the-East?—No.

631. Was not that meeting at Stokes Hall (in which you took part) of the same character, and for the same purposes, as all the other meetings which took place last year in St. Thomas'-in-the-East; for instance, like that of the "Cotton or Guinneppe Tree," at Morant Bay?—I perceive by this question that you are mixing up my name with meetings and assemblies; with the exception of one instance, I know nothing of the locality mentioned. "Guinneppe Tree" I do not know. I had spoken at the Stokes Hall meeting, but the address I made did not occupy more than 10 minutes; that is the only meeting I ever went to, and to none other; I never knew of them at all.

632. About how many persons were there at the Stokes Hall meeting; and of what class in life were they who chiefly composed the mass of persons

persons present. Now tell the Court, were they not labourers on estates?—I suppose over 200 were present; labourers were there; a few book-keepers, and I think one overseer; but of this I am not so certain.

633. You say a few book-keepers and one overseer; was one book-keeper Mr. Wood; and one overseer Mr. Chisholm?—I am positive Mr. Wood was there; I have a faint recollection of Mr. Chisholm being there, but am not so sure about him.

634. Do you think that they, Wood and Chisholm, heard what you spoke, and what Anderson spoke, at that meeting?—I cannot say.

635. Were you ever at Duckenfield in the presence of Phillips, Cyphus Wills, or Colson, or Duany, or Anderson, charged by Mr. Sinclair with being concerned in the rebellion; if any one of these persons has sworn that you were so charged, would that witness have, in your belief, sworn truly or falsely?—I never was so charged. If any one has so sworn, most decidedly they would have sworn most falsely.

636. Were you ever so charged by Mr. Sinclair, in the presence of any other person than those named in the last question?—Personally I never was so charged; but I cannot account for what may have been said behind my back.

637. Now do you not know, when you fled for your life, the charge against you was for being concerned in supplying the rebels with cutlasses, or with concealing rebels, or with making seditious speeches to the labouring population?—I knew nothing of the sort; and I defy any person truthfully to state that they saw me supplying the rebels with cutlasses; the rebels did take from me cutlasses, as well as other goods, which I was compelled to give to save my life. That is a fact well known in Plantain Garden River District, that persons situated as I was, as a loyal subject, could not withhold from the rebels whatever goods they may demand.

638. *By Prosecutor.*] You have been asked in the cross-examination several questions as to what you said, and what you did not say, before the Royal Commissioners; did the Royal Commissioners allow you to tell your own story, or did they put questions to you, and were you strictly held to answer those questions, and not allowed to enlarge upon them in any way?—Before Mr. Maule, questions were put to me; I was never told I could state my own story; when I answered one question, I waited for another. It appeared to me that Mr. Maule was not anxious or desirous for me to say anything more than the real facts.

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639. You have said, in reply to several questions, that you gave evidence before Mr. Maule at Morant Bay; have you ever seen any written or printed report, or copy of the evidence so given, by which you could test its accuracy or refresh your memory?—

> The Prisoner objects to this question, as the Court has already decided, on cross-examination, that he could not go into such examination as that now attempted in re-examination; and asks why this question was not asked in the examination-in-chief, when he might have cross-examined to the facts attempted to be elicited in this question. Now he is debarred from testing the truthfulness of any answer; besides, the question does not strictly arise out of the cross-examination.
>
> To this the Prosecutor rejoins that the question now put is wholly different from any that has been put and overruled before. The question does arise out of the cross-examination, and so sets out on the face of it.
>
> The court is cleared for deliberation.
>
> The court re-opens, and the Prisoner is informed that the question has been decided to be admissible, as arising out of the cross-examination.
>
> The Witness therefore is directed to reply to the question.

I never saw my evidence, written or printed, save that portion of it which referred to my identification of Ensign Cullen and Dr. Morris before the Royal Commissioners at Spanish Town.

640. Who were those soldiers at Golden Grove on 22nd October 1865, by whom the words reported to you about your being shot were used?—I cannot say of my own knowledge.

> It being now 4 p.m., the Court adjourns till 9.30 a.m., 25th instant.

Eleventh Day, 25th October 1866.

On Thursday, the 25th day of October 1866, at 9.30 a.m., the Court re-assembles pursuant to adjournment: present, the same Members as yesterday, and proceeds with the Re-examination of George Grant Manning.

641. *By Prosecutor.*] Has a Court of Special Commission sat in Kingston since martial law for the trial of all persons who committed any offence during martial law, or before it, tending to the outbreak in St. Thomas-in-the-East; and were any prisoners tried at that court?—Yes, there was a Court; and many prisoners were tried before that Court.

642. Were either you or John Anderson tried at that Court, or were any charges of any description preferred against you or Anderson at that Court, or before or since?—We were not tried. No charge of any description has ever been brought against me; nor do I think any were brought against Anderson. I may add, I was summoned as a witness to attend that Court.

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643. If Peter Phillips has said that Mr. Sinclair before his face charged you with bringing rebels on the estate (Duckenfield), was that charge made in your presence; can you give the Court any explanation about this charge, supposing it to have been made; do you know of any circumstance out of which it may have arisen; if so, explain it?—No charge of that sort was ever made in my presence. I think from this it has arisen: When I heard of the out-break

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break in Morant Bay, and the killing of Captain Hitchings, a volunteer, I went to Bath, and conducted his widow to my place, together with her two infant children; one she was nursing at the time. About five o'clock we were there; meaning we arrived at my place then. Then it was rumoured to me that the rebels had contemplated to destroy my place. At candle-light two servants came to me with a message, using the name of Augustus Parker Davies, who was stopping at the Great House at Duckenfield, to send over Mrs. Hitchings to him, for she was not safe with me. She went off with her children. About half an hour afterwards a band of rebels came down upon my place; they argued among themselves, and then decided not to disturb my place. The rebels said, "We go to Duckenfield." Hearing that, I asked a woman that was with me in the shop to accompany me to Duckenfield. We took a back direction, and ran all the way. I saw a light in Mrs. Hitchings' room, and spoke loudly to her to come out at once, to escape for her life, as the rebels would be down there in a few moments. She went away, and I went away with her and the two children. I suppose that charge was based on that story that I had taken Mrs. Hitchings away from Duckenfield House.

644. How came you to say yesterday, in answer to a question, "Did Mr. Lewis ask you if you knew what had become of the three men, Bell, M'Call, and Walton?" "that you had no recollection of such a question being put to you by Mr. Lewis;" and immediately after, in answer to another question, "Did not Mr. Lewis then and there ask you about the killing of the three men?" you answered, "Yes, he did;" explain this to the Court?—When I said I have no recollection of such a question being put to me by Mr. Lewis, that is the wording of the question itself as put yesterday, was what I referred to. I did not mean that I did not know what had become of the men, but that the question was not put to me in those exact words; that is what I meant I had no recollection of. The substance of that question might have been asked by Mr. Lewis at Morant Bay, but I have no recollection that it was put to me in those words.

645. *By Court.*] Were the questions at Morant Bay on 19th March put to you by Mr. Maule himself, or were they put by Mr. Payne or Mr. Morgan?—They were put to me by Mr. Commissioner Maule.

646. About how many soldiers formed the party which fired at the prisoners you state were shot?—About 10 or 12; ranging from 8 to 10 or 12.

647. You say there were three discharges; what interval was there between each discharge?—It could not have been more than a minute.

648. How many men fired each time?—I cannot say.

649. Did you see them load?—No.

650 How far is Manchioneal from the Iron Bridge?—Nine or 10 miles; not more than 10.

651. Did the soldiers remain at your store all the Saturday; if not, when did they leave, and in what direction did they go?—To the best of my recollection, they left in the afternoon; it may have been two o'clock or three o'clock; I know the day was advanced. They proceeded in the direction of Golden Grove.

652. Is Saturday a regular market day; and where is the market-place in your neighbourhood?—Saturday is a regular market day, and the place is at Golden Grove.

653. You spoke of the blacksmith's shop; where is it?—It is just at the corner of the road, near the bridge; it is close to, and can be seen from my shop.

654. About how many people were there at and near your shop at the time the three men were shot, as stated by you?—One or two scores; spectators; I did not notice, owing to the confusion. I just form that as an estimate of the number. By spectators, I do not mean soldiers.

655. When the soldiers fired, about how many people were there on the road between your shop and the place where the men were shot?—I can form no estimate of the number; the road was not crowded then.

Sixteenth Witness for Prosecution.

JOHN ANDERSON, Teacher of Children, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

J. Anderson.

656. *By Prosecutor.*] Do you remember the time of martial law; and where did you live at that time?—I remember martial-law time; I lived then at Amity Hall.

657. Did you go to the Plantain Garden River Post Office at any time, and what time in the early part of martial law; and did you see anything particular happen there?—I did go to the post office; I think on the 12th October 1865; it was a Thursday.

658. Were you there on any other day after the 12th?—I was. I remained at the post office from the 12th, when I heard of the breaking out at Morant Bay, till the Sunday, the 22nd, when I was taken to Golden Grove, and received 50 lashes on my back.

659. Before you were taken to Golden Grove, did you see anything particular at the Plantain Garden River Post Office?—I did. At the first I saw three soldiers (I cannot recollect the date) pass by and go towards Duckenfield, accompanied by Cornwall.

660. Did you see anything on the day before you were taken to Golden Grove?—I did; on 21st October, I saw about half a company of soldiers halted at the Post Office, between eight and nine o'clock; this was in the morning, soon after we take our coffee, which we do about seven o'clock. They remained there some hours. It so happened that that day was a post day. About mid-day there was a cry made "Prisoners are coming! Prisoners are coming!" They also said one get away. Prisoners were brought (three) opposite the Post Office, by three constables, Bryan, Wills, and Colson. One of the officers, Ensign Cullen, went out in the road to the constables and the prisoners. Bryan handed him a piece of paper, a note, out of his pocket; and Hunter, the corporal, took entire charge of the prisoners, whose names were Richard Walton, Tommy

Tommy Miles, and John M'Call, and tied them to one of the posts that supports the shed of the Post Office. Hunter then came into the shop and asked for twine, to make a cat of, saying that the men are to be flogged. He received the quantity he wanted, and was about to make a cat, when Dr. Morris, who was lying on a table, went through the door of an adjacent room and went to Ensign Cullen, who was out on the road, looked into the paper; Dr. Morris looked; and both officers whispered; I heard the order through Corporal Hunter; that is I heard the corporal say, "The men are to be shot." Hunter accordingly went to the posts and was loosing the three men; one of the prisoners, Richard Walton, was about to speak. Hunter slap him in the mouth and asked him how he dared to speak when brought there. They were immediately loosed from the post and they were going to shoot them opposite the Post Office, but Mr. Manning begged them not to shoot them there, and the prisoners were then taken a little way down the road which leads to Holland Bay, south east, and tied one after the other to the Duckenfield fence. I went out in the main road where I could see the soldiers range themselves up opposite the fence where the prisoners were tied. Dr. Morris went with the soldiers. Ensign Cullen went part of the way down, but I cannot say how far, because my attention was more taken up with where the men were; I heard the report and I saw the guns, the rifles, at the "present," but owing to the bend of the road, and the thickness of the fence, I did not see the bodies when they were shot; I was so bewildered that I could not go where the soldiers were at that moment. I was at that time in the middle of the road, straight in front of the Post Office box. After they returned I saw Hunter's sword with blood and brains upon it, and he looked for something to wipe it off. After they came back nothing particular transpired, and the officers went to bathe. Then I went down to look at the bodies; the brains of one was over his face; I could not tell who it was, for the sight was so frightful, I could not examine who it was. The three were all dead, perfectly dead, with their arms tied to the bamboo fence behind them. They were the same men I saw taken down the road. *J. Anderson.* 25 October 1866.

661. What soldiers were they that you speak of?—Black soldiers; there were three white men amongst them; two officers, and the serjeant-major was a white man.

662. Did you hear any statement made, in Ensign Cullen's hearing, of what offence the prisoners had committed?—I did not.

663. How far down the road do you think the prisoners were taken; that is from the Post Office?—I cannot positively say; but I should think some 60 yards.

664. As far as you are able to estimate, how many soldiers went down to the bamboo fence where the prisoners were shot?—I should think the highest number would be 14; but of that I cannot be positive, as I did not count them; I mean soldiers who took their rifles with them.

665. On which side of the road, as you stand at the Post Office looking to Holland Bay, were the soldiers ranged, when down at the place where the prisoners were shot; and on which side were the prisoners tied to the bamboo fence?—It was on your left side as you go to Holland Bay; the soldiers stood with their backs to the river, just before where the road bends and prevents you from seeing along the road; you could see where the soldiers stood from the Post Office. The prisoners were tied on the right hand side of the road as you go to Holland Bay.

At 12.50 p.m., while the foregoing answer was being read over to the witness, one of the members of the Court, Captain Seton, 102nd Regiment, was suddenly seized with illness, which for the time rendered him incapable of performing his duty.

The Court consequently adjourned till 9.30 a.m. to-morrow the 26th instant; and in pursuance of a General Order, dated 24th October 1866, will assemble in future in Kingston Barracks, instead of Up-Park Camp.

Twelfth Day, 26th October 1866.

On Friday, the 26th day of October 1866, at 9.30 a.m., the Court re-assembles in Kingston Barracks, pursuant to adjournment: present, the same Members as yesterday, and proceeds with the Examination-in-chief of John Anderson.

The reply of the Witness to the last question put to him yesterday was read over, and stated by him to be correctly entered.

666. *By Prosecutor.*] Did you make any observation of how the brains of the one man came to hang over his face?—They came from the centre of his skull right over his face. Corporal Hunter made an observation that he had opened plenty of skulls with his sword, on the march.

667. Did you see any mark of chop or cut on the head?—The sight was that frightful, I could not go near the man to examine.

668. You have said, "The officers came up after the men were shot;" what officers do you mean; tell their names?—Ensign Cullen and Dr. Morris; and on my going down I met the serjeant-major coming up.

669. Are you a native of Jamaica, and have you any credential or authority to act as a teacher; have you been trained to it?—I am not a native of Jamaica, but of Antigua; I was brought over here by Mr. Miller, of Glasgow, Superintendent of the Mico Institution, from Antigua, where I had been trained; I was in bad health, and when I got better, I was pressed by Mr. Miller to remain here as a teacher, and I did so. 26 October 1866.

670. Would you know Ensign Cullen again, if you saw him; if so, stand up and point him out if he is in Court?—

Witness identifies Ensign Cullen.

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671. *By Prisoner.*] Were you examined on oath at Golden Grove before Mr. Maule, on 17th March, and before the Commissioners in Spanish Town, the 3rd April 1866; and were not these times the only times that you were examined on oath about these matters?—I do not remember the exact dates, but I was examined at Golden Grove by one of the Commissioners; Mr. Lewis was then present; I was also examined at Spanish Town, and those are the only times I have before been examined on oath about these matters.

672. How long have you been living in St. Thomas-in-the-East?—Since 1843, off and on; but I have lived during that time in St. David's, and in Kingston.

673. How long have you known Manning?—Since 1855.

674. Besides being a teacher, were you a Baptist; did you tell Mr. Maule that you were?—I was, and I told Mr. Maule so.

675. Can you tell the Court about how many different times you have been at the meetings which were held in St. Thomas-in-the-East, amongst the lower orders last year (1865), and before that year?—Twice in 1865; not before that year; I do not of course mean by that, meetings for the Scriptures; but for meetings where people open their minds. Every Sunday evening I explain the Scriptures.

676. Were you a secretary or a speaker at such meetings; or at any of them, last year?—I did speak at Stokes Hall, and at Morant Bay also.

677. What did you act as, at the meeting at Morant Bay, when Mr. Gordon was there; were you not secretary?—I was not; I was one of a deputation appointed at Stokes Hall to carry resolutions to Spanish Town; but I did not go; the deputation was stopped at Morant Bay.

678. Were the general purpose and the character of the meeting at the Guinneppe tree at Morant Bay, the same as the purpose and character of the meeting at Stokes Hall; you were present at both meetings, were you not?—I was present at both. The general purpose and character of both meetings were the same—the state of the Island at that time.

679. Did you warn Manning to fly for his life; and if you did, why did you so warn him?—I did; when I received 50 lashes at Golden Grove; that is in the morning when I was tied there before I was flogged, I heard Mr. Sinclair ask two volunteers why the devil they bring this man here and leave Manning. This was the reason I warned Manning, as I then learnt his life was in danger.

680. Were you examined as a witness on both occasions, at the instance of Mr. Morgan or Mr. Payne?—I think I was.

681. In answer to a question, when you were examined on oath before the Royal Commissioners at Spanish Town: "Then none of the constables were present when they were shot?" did you answer: "They did not witness the shooting, it was too distressing"?—I think I remember that question being put to me, and I also think my answer was, that "I did not observe them going down to the place;" that is the constables. I wish to explain that I had been living from October to January in an uninhabited part of the island, at the east, because I was afraid of being shot. When then I went to Spanish Town before the Commissioners, I was bewildered, and I may have made mistakes in my evidence.

682. In answer to a question on oath before the Royal Commissioners in Spanish Town, "Was he (Ensign Cullen) there at the time the soldiers fired at the prisoners?" did you answer, "I cannot positively swear to that"?—I did.

683. Were you also then further asked, in Spanish Town, "Was he there at the time that the soldiers fired at the prisoners;" did you then answer, "I cannot positively swear to that"?—I do not remember the question being asked twice, but I think the Commissioners asked me whether Ensign Cullen went down with the prisoners, and that I said, "he moved off, but that I could not say how far down he went, and that I could not positively swear how far he went, though he moved off the spot."

684. Did you, on 17th March, at Golden Grove, before Mr. Maule, when you were examined about the deaths of the three men, ever swear to Ensign Cullen being concerned in the killing or shooting of the three men?—I do not remember stating any more than that the men were ordered to be flogged by him, Ensign Cullen.

685. Did you ever before the Commissioners, either at Spanish Town or at Morant Bay, on oath, on your examination, ever venture to swear (as you have now sworn) that you heard the order through Corporal Hunter; that is you heard the corporal say, "The men are to be shot"; is not this the first time you have sworn that, or anything like it?—This is the first time I swore to that; I said I heard the order, but did not say through what channel I heard it.

686. Did you ever, either at Spanish Town or Golden Grove, venture to swear (as you have now sworn) that Richard Walton was about to speak, and Hunter slapped him on the mouth, and asked him how he dared to speak when brought there; or anything like that; is not this the first time you have sworn that, or anything like it?—I cannot remember whether I swore that before or not.

687. Did you ever before, either at Spanish Town or at Golden Grove, venture to swear as you have now sworn, that Manning begged them not to shoot the prisoners there (near his shop); is not this the first time you have sworn that, or anything like it?—To my recollection, this is the first time I have sworn that, the reason being that now my mind is more serene, more calm.

688. Did you ever before, either at Spanish Town or Golden Grove, venture to swear as you have now sworn, "that you went out (of the shop) into the main road, where you could see the soldiers range themselves opposite the fence where the prisoners were tied"; is not this the first time you have sworn that, or anything like it?—I cannot remember whether I did swear to that or not.

689. Did you ever before venture to swear that "Hunter had a sword with brains and blood on it, and he looked for something to wipe it off"; is not this the first time you have sworn that, or anything like it?—I do not remember whether I mentioned that or not before; I told them about the shooting of the three men at the bridge, but there were many particulars I did not tell them which I have told here.

690. Did you ever before, at Spanish Town or Golden Grove, swear, as you have now sworn, that Corporal Hunter made any remark that he had "opened several skulls on his march"; is this the first time you have so sworn?—This is the

the first time to my recollection I have sworn that.

691. Did you ever before swear what you have sworn to now, viz.: "that you observed the brains hanging from the centre of his skull," and also "that you saw the brains on the sword"; is this the first time you have so sworn?—I said before the Commissioners that the skull of one of the men was split open, but I did not say what my impression was as to the weapon with which it had been so split, nor did I say anything about the blood and brains on the sword.

692. Do you intend that the Court is to understand from you that you remember details of all the circumstances of these matters better now (12 months ago) than you did five or six months ago, when you gave your evidence on oath?—I do; because I prayed to the Lord and he assisted me, and the things appear to my mind as if yesterday.

693. Have you a good or bad memory; has your mind been wandering on account of all you say you suffered?—I think I have a good memory; but, as I have already stated, when I was before the Royal Commissioners my mind was wandering.

694. Did you mention on 17th March, or at any other time, to Mr. Lewis, at Golden Grove or elsewhere, anything about the killing or the shooting of these three men when he took down your statement; did you tell him any of the new statements which you have been swearing to before the Court here?—I think I told Mr. Lewis about the three men; but I cannot remember whether I told him the statements I have made in full to this Court.

695. Tell the Court your recollection as to the number of persons (not soldiers) who were all about the Bridge, Post Office, &c. &c. on the day you speak of?—I could not swear to the number.

696. Are you able to swear that you and Manning, for the last 12 months, have never spoken to each other about these matters, or about your evidence; or have you no recollection whether you did or did not so speak with him or he with you?—We have spoken to one another about this shooting, but never about the evidence. *J. Anderson.* 26 October 1866.

697. Have you done the same with Donaldson and Duany?—Donaldson I never speak to about the subject at all, though I see him at the Post Office; Duany I also see at the Light House, but with him I never speak on the subject. They were both present, and see things for themselves. The only thing we express is that we never saw things like it.

698. *By Prosecutor.*] Were you confined, in your examination before the Commissioners, to questions and answers; and were you restricted from saying more than what was strictly an answer to the question put?—I do not remember that I was.

699. *By Court.*] You say you saw the soldiers ranged up when they fired. How many times did the soldiers fire?—Three different times, one after the other; the third time Dr. Morris presented a rifle.

700. What interval of time was there between each discharge?—There was an interval, but I cannot say how long it was.

701. About how many men fired at each discharge?—Between four or five, perhaps more; I cannot swear with precision to the exact number; but more than two.

702. Did you see them load?—I did not; for many were loaded when the cry of "prisoners come" was made; many of the soldiers took up their rifles, and said they were "all right."

703. Did you see Mr. Manning anywhere when the soldiers fired; and, if so, where was he then?—I did not observe him at the time.

704. Did you tell Mr. Maule, on oath, or Mr. Lewis at Golden Grove, in last March (as you have sworn here to-day), that you saw Dr. Morris with a rifle at the shooting, or that he presented it the third time at the prisoners?—I think I said to both those gentlemen that I saw Dr. Morris with a rifle, but I said nothing as to what time he presented it.

[The Witness withdraws.

Seventeenth Witness for Prosecution.

THOMAS CLARK, a Labourer, residing on Holland Estate, being duly sworn, is questioned by the Prosecutor.

705. *By Prosecutor.*] Do you remember martial law?—Yes; I do. *T. Clark.*

706. Did you know a man named Richard Walton?—Yes.

707. Where is Richard Walton?—He is shot.

708. Who shot him?—Soldiers.

709. Did you see the soldiers shoot him?—Yes.

710. When did you see it, and at what place?—On a Saturday, at the Iron Bridge.

711. What sort of soldiers; what colour?—Black soldiers.

712. Did you see Richard Walton come to the Iron Bridge; who brought him?—I did; constables brought him.

713. Did anybody come with Richard Walton; any other men?—Yes; two more were with him.

714. Do you know the names of the other two men?—I know the name of one, Richard McCall.

715. Who took Richard Walton, and the other men, from the constables?—Black soldiers.

716. What was done with the prisoners when they came at first?—They take them, and tie them to the post in front of Mr. Manning's shop.

717. After they tied them, what did they do with them?—They, that is the soldiers, were going to shoot them in front of Mr. Manning's shop, but he ordered them off.

718. When Mr. Manning ordered them off, what did they do?—They loosed them, and carried them down to the bamboo corner—the soldiers did.

719. When they carried them down to the bamboo corner, what did they do?—I could not see what they do in the bamboo corner from where I stood in the road.

720. Did you see any officer at the shop before the prisoners went down?—Yes, I saw two officers; I do not know their names.

721. How far did the soldiers take the prisoners?—They carried them away from the shop, not very far from the carpenter's shop.

722. Is there any bamboo fence near the place?—Yes.

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723. Where is the bamboo fence, and did you see anything done there?—The logwood corner, right-hand way. I was standing up in the road when I heard the gun fire, and after that I saw the soldiers come back.

724. When you heard the gun fire, did you see the three men, the prisoners?—Yes.

725. Where were they at that time?—They were at the logwood corner.

726. Were they walking or standing, or how?—I did not see them; the soldiers got them in the bamboo corner.

727. Did you go away from the Iron Bridge, and did you come back the same day?—I went away to Golden Grove, to carry soup for the doctor; I came back the same day.

728. When you came back, did you go to the bamboo corner?—Yes, I walked down to the corner.

729. What did you see there?—I saw the three dead men.

730. Were they lying down, or how?—They were bowed down.

731. Were they tied or loose?—They were tied to the bamboo railing, their two hands tied aback of them.

732. Did you see any officer go down with the prisoners and soldiers to the bamboo corner?—I saw one of them that went down with them.

733. Were any of these three men family to you?—No.

734. When was all this you have been telling?—I cannot tell the month or the year.

735. Was it before last Christmas?—I cannot really say.

736. You have said you remembered martial law; was it in martial law time?—I do not remember the time.

737. *By Prisoner.*] When you say you could not see what the soldiers were doing with the prisoners in the bamboo corner, were you standing on the road in front of the shop?—I was standing most at the cross-path, where one road leads to the Bridge and the other to Holland Bay.

738. Is the cross-path between the shop and the Iron Bridge?—It is where one road goes over bridge, and the other straight on.

739. Have you kissed the book in Spanish Town or St. Thomas-in-the-East about all this story?—No.

[The Witness withdraws.

Eighteenth Witness for Prosecution.

Eliza Phillips, residing at Holland Estate, St. Thomas-in-the-East, being duly sworn, is questioned by the Prosecutor.

E. Phillips.

740. *By Prosecutor.*] Do you remember martial law time?—Yes.

741. Do you know the Iron Bridge at Duckenfield, and Mr. Manning's shop close to it?—I know them both.

742. Did you go to the Iron Bridge about that time, and can you tell when?—I went in last year, October.

743. What day of the week was it?—A Saturday.

744. Did you see any soldiers there, and what sort?—Black soldiers, and one or two white among them.

745. Did you see any officers with the soldiers?—I do not know officer from soldier.

746. Was there among the soldiers any relation of yours?—Corporal Hunter was there, he is family to me (that is a relation).

747. Did you see any prisoners brought in?—Yes.

748. How many? If you know the names, tell the Court.—There were three, but I do not know their names.

749. Who brought the prisoners?—Three constables.

750. Who took the prisoners from the constables?—Corporal Hunter.

751. What was done with the prisoners, so far as you saw yourself?—When Corporal Hunter took the prisoners I did not see what was done, as I went back to the kitchen.

752. Did the soldiers press you to cook for them?—Yes.

753. What were you cooking?—Rice; but I do not know the names of the soldiers it was for.

It being now 4 p.m. the Court adjourned till 9.30 a.m. 27th instant.

Thirteenth Day, 27th October 1866.

On Saturday, the 27th day of October 1866, at 9.30 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as yesterday; and proceeds with the Examination-in-chief of Eliza Phillips.

E. Phillips.

754. *By Prosecutor.*] When you put the rice on the fire, did you come out of the kitchen, and what did you see then?—I came out of the kitchen, but I did not see anything then.

755. What did Corporal Hunter do with the prisoners?—I do not know what he did with them.

756. Did you see anybody box any of the prisoners?—Corporal Hunter did.

757. After Corporal Hunter boxed the prisoners, what did he do with the prisoners?—I did not see what they did with the prisoners, for I went back to the kitchen.

758. Did you see the prisoners carried away from Mr. Manning's door?—When I came out of the kitchen, I saw them going down the road.

759. Down which road do you mean. Where does

does the road lead to?—The road leads to Holland Bay.

760. How far down the road did the prisoners go?—I really cannot tell, for, as they were going along, I turned back into the kitchen.

761. Who went down the road with the prisoners?—I see Corporal Hunter; he is the only one I know.

762. Did you see anybody else. If you do not know the names, tell how many, as near as you can guess?—I saw more soldiers, but I cannot reckon them.

763. Is there any bamboo fence on the road?—Yes, there is a bamboo running into a logwood fence.

764. When you saw the prisoners, were they loose, or how?—When I saw them, their hands were tied behind their backs.

765. Did you see who tied their hands behind their backs?—No.

766. Did you hear any guns go off?—Down in the kitchen, I heard guns go off.

767. Where were the prisoners at that time?—I do not know, I cannot say.

768. Did you see anybody tie any of the prisoners to anything?—No.

769. When you heard the guns go off, was it after you saw the prisoners and Corporal Hunter and the other soldiers go down the road?—Yes.

770. Did you go to the cross-pass at all that day?—Yes.

771. What did you see when you were at the cross-pass?—When I was at the cross-pass, I saw the men going down the road, and I turned back, and went into the kitchen.

772. *By Prisoner.*] Is the kitchen behind the shop?—Yes.

773. About how many yards behind?—About three yards. *E. Phillips.*

774. You say Corporal Hunter is your family; did you see him and other soldiers plenty of days during martial law about the Post Office and Iron Bridge, and the road there?—Corporal Hunter is my cousin, and he asked leave to go and see his family; and he came to the Iron Bridge on a Saturday in martial law; I saw him when he came to see the family, and so I knew him. I did not see other soldiers plenty of days during martial law; I saw Corporal Hunter two times; the first time I saw him was before martial law. 27 October 1866.

775. Was Corporal Hunter about there to see his family, more days than one; how many days did he stop to see his family?—One day I saw him come to Holland.

776. Do you know that these soldiers were about there for a week or 10 days?—No, I cannot tell for that.

777. Did you kiss the book before this time, about the matter at Spanish Town, or anywhere else in St. Thomas-in-the-East?—No.

778. *By Court.*] When you were in the kitchen how many guns did you hear go off; how many times did you hear guns go off?—I could not say; I did not reckon how many guns, nor can I say how many times guns go off.

779. What is a yard; point out the distance?

The Witness points out what she considers a yard to be, and the distance was found to be two paces.

[The Witness withdraws.

Nineteenth Witness for Prosecution.

John Fleming Duany, Lighthouse Keeper at Morant Point, being duly sworn, is questioned by the Prosecutor.

780. *By Prosecutor.*] Do you remember the time of martial law; where did you live at that time, and what was your occupation?—I remember martial law; I was then lighthouse keeper and lived at Morant Point. *J. F. Duany.*

781. Did you go to the Iron Bridge during martial law; if so, state when?—I went to the Iron Bridge on the 21st October 1865, on a Saturday.

782. Whom did you see when you arrived there?—I saw a lot of soldiers there.

783. Who did you see in command of the soldiers?—Ensign Cullen.

784. Did you see any one with Ensign Cullen?—Dr. Morris was lying on a table in Mr. Manning's; Mr. Cullen was sitting at the door.

785. Who went with you to the Iron Bridge?—A constable named Speed, who lives at Holland Bay.

786. Did anything like alarm or noise attract your notice, after you arrived at Mr. Manning's shop?—Yes, the soldiers make a noise, and say a prisoner get away, and they run to try and catch him; some went one way and others along the road to the Bay; some went down the road, and some went up the road, to try and meet the prisoner; they did not catch him, but they met the other three prisoners.

787. Go on and tell the Court all you saw?—Two constables and a bookkeeper from Duckenfield, named Bryan, brought in three prisoners; Ensign Cullen went out in the road and met them, and among the prisoners, I know one of them; named Richard Walton, and I went out into the road and went up to Ensign Cullen and asked him what these people were doing, and he said, they have been taking a few nails; I said, pointing to Walton, "I am very sorry to see that man into it, because he is very useful to us at the lighthouse; when we have any express message to go into Kingston, he never refuses to go." I asked him what he intended to do with him, and he said he would flog him, "I said very well, he should not interfere with what does not belong to him;" Mr. Cullen then went into the store and asked Mr. Manning for some twine to make a cat, and Mr. Manning handed him a ball, and he gave it to Corporal Hunter, and he cut the twine and was making the cat; when the cat was nearly finished, I saw the black soldiers loosing the prisoners, who were tied to a post, and taking up their rifles quite in a hurry, and one soldier begging of another for a chance, saying, "Oh, give me a chance; oh, give me a chance," I then said, "What are you going to do?" and one of the soldiers say, the Doctor order them to be shot. I said to Mr. Manning, "It is a pity to shoot that man," meaning Walton, "let us go and speak to the Doctor;" and he, Mr. Manning, said "You better not interfere as they

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may shoot you yourself." I then kept in the shop and would not go out after that; while Hunter was loosing the men from the post, he said to them, "You had better say your prayers at once, you soon out of this;" a man attempted to say something and he boxed his mouth, and he told him to "shut his mouth, he ought to have said his prayers since last night." When Mr. Manning heard they were going to be shot, he came out and begged them to take them away from the door, and they, the soldiers, then took the prisoners down the road, the road which leads to Holland Bay; they march off from the shop, the Doctor and Ensign Cullen with them; I kept myself in the store after that and did not go out. I heard two volleys fire, and I stepped to the door and peeped out; when I did so I saw one man standing against the fence, that is, I saw his head; I could then see the head drop, as the gun went off. After the men were shot, the Doctor and the officer came back to the shop, and they asked for a bit of soap to bathe. Corporal Hunter came up to the shed, and said, "I have just eaten my breakfast now; my gun was long dirty, and wanted to be cleaned;" he was then wiping the nipple; I then went on to the Golden Grove, and left the soldiers at the Post Office.

788. Do you know the names of the constables?—I do not know them well. I heard one was named Wills, and one Colson.

789. Do you know the names of any of the other two prisoners, other than Richard Walton?—No; I did not know them before; I did hear their names afterwards, but I quite forget them.

790. Who boxed the prisoner in the mouth?—The man Hunter.

791. What post were the prisoners tied to before they were taken down the road?—One of the posts of the shed, in front of the door.

792. How far down the road did they go?—I cannot exactly say, but some 70 or 80 yards.

793. How many prisoners were taken down the road?—Three.

794. The man whose head you saw drop, just after you heard the gun, did you see him taken across the road?—They took them away across to the bamboo fence of Duckenfield, and the soldiers stand with their backs towards the river and fire across the road.

795. What door were you standing at, when, as you say, you peeped and saw what you have narrated?—Mr. Manning's shop door, the middle door.

796. Were you up on the floor, or down on the ground?—I was on the floor.

797. Are you quite certain that the two officers, Dr. Morris and Ensign Cullen, went away from the shop with the prisoners down the road?—Yes; they marched off from the shop, but whether they went the whole way up to the spot, I do not know.

798. Standing on the floor of the shop at the middle door, can you see if you stand upright?—A tall person could not, a short one could; when I came to the door I stooped a little to see, because the shed is in your way.

The Witness here requests that the previous question (797) and answer might be read over to him, and on this being done, he requests that the following explanation may be added to his reply.

I mean that I do not know how far down Ensign Cullen went, but I know that Dr. Morris was on the spot when the men were shot.

799. Are you quite certain that both the officers, Dr. Morris and Ensign Cullen, returned to the shop together, and that they were together when Dr. Morris asked for the soap?—Both came up together; and both went to the river, and I went off to Golden Grove.

800. Have you ever seen Richard Walton since that time?—No; I could not see him after he was shot; I did not pass that way, but went over the bridge.

801. Do you know Ensign Cullen, point him out if you do, if he is in Court?—Yes, I know him (*witness identifies Ensign Cullen*).

802. *By Prisoner.*] Were you examined on oath at Spanish Town, and no where else, before the Royal Commissioners. Can you tell the Court the date, the month, and the year when you were so examined?—Nowhere else, but at Spanish Town; it was this year, about April, I think, but I am not sure of the time.

803. In answer to a question before the Royal Commissioners at Spanish Town, "Do you remember what day it was?" (meaning the day you saw the soldiers and prisoners at the Post Office), did you answer. "It was on a Saturday, I do not know the date"?—I think I did tell the day.

804. Is your memory uncertain about that which you swore to only last April?—I do not recollect whether I did state the day of the month, though I think I did.

805. In answer to a question before the Royal Commissioners at Spanish Town, "You did not hear the Doctor yourself do that" (order them to be shot); did you answer, "No, he was in the room"?—I do not recollect that question being put to me in Spanish Town, nor my making that answer.

806. In answer to a question before the Royal Commissioners at Spanish Town, "Now just explain this to us" (meaning putting up one after the other and shooting him), "Where were you standing when the men were shot?" did you answer, "I was in a shop, look through the glass; I could not bear to go near"?—Yes, I did.

807. In answer to a question before the Royal Commissioners at Spanish Town, "Who was in the room when you were looking out of this window" (meaning when you say the men were shot), did you answer "Several; Manning, his boy, and Anderson?" "They were all in the room with me"?—I do not recollect that.

808. In answer to a further question then put you, "They were all in the room, were they?" did you answer, "Yes, only just peeping out." And in answer to a further question, "You are quite certain they were in the room?" did you answer, "Yes"?—I cannot recollect either question, or my answers to them.

809. In answer to another question before the Royal Commissioners at Spanish Town, "You say you saw Manning's boy in the room, at the time these people were being shot?" did you answer, "Yes?"—I do not recollect that I did.

810. In answer to a further question before the Commissioners, "And Anderson, the schoolmaster, you say you saw him in the room?" did you answer, "Yes?"—I do not recollect; all were in the store, but when the order was given for the men to be shot, I do not know who was out or who was in.

811. In answer to a further question, "Did you

you continue in the same room till you heard the guns fire, and the man shot?" Did you answer, "Yes"?—I believe I did.

812. Is it that you swear that you do not recollect the exact form of questions and answers asked now, or that you do not recollect the substance of such questions and answers as are now being put to you; you are required to answer substantially as to your knowledge and recollection of these matters?—I do not understand that; (*and on the question being illustrated by a reference to Question* 809, *as an instance, the Witness answered*) that question may have been asked, but I have no recollection of its having been asked.

813. Do you mean that you do not remember the mere form of questions and answers, or that you do not recollect the substance of the questions and the answers read to you just now?—I am an illiterate man, I cannot understand such hard questions; but if you ask me plain questions, I can answer them.

814. As you cannot remember what you swore to at Spanish Town, what is your evidence on this point, and which is correct; that you were standing at Manning's shop-door, or was it that you were looking through the glass?—I looked through the glass sometime; but when I heard the guns fire, I looked out at the door.

815. Did you ever before at Spanish Town swear that the soldiers said, "Give me a chance; give me a chance"?—Yes, I did.

816. Did you ever, before the Commissioners on oath at Spanish Town, swear that "Manning came out and begged them to take them away from the door, when he heard they were to be shot," or is this the first time?—I think I mentioned that in Spanish Town to the Commissioners. *J. F. Duany.* 27 October 1866.

817. Will you now swear that from the shop in which you were standing you could at the very same time see the place where the soldiers stood at the time of the firing at the prisoners; or that you could then see Dr. Morris on the very spot?—I could see the soldiers and the doctor all at the spot.

818. Will you now swear that from the shop in which you were standing, you could see the bamboo rails to which the prisoners were tied, or any head at all there then?—I could not see the bamboo exactly, on account of the logwood fence; but I could see the man standing against it; the head I mean, not his body.

819. Did you peep your head out at all till you heard the report of the guns?—I did not peep out till after two volleys were fired; then I thought it was all over, and I peeped out; and then I saw the head of one man standing, and the gun went off and the head drop.

[The Court adjourned at 2 p. m. till 10 a.m. 29th instant.

Fourteenth Day, 29th October 1866.

On Monday, the 29th day of October 1866, at 10 a. m., the Court re-assembles pursuant to Adjournment—present, the same Members as on Saturday last, 27th instant—and proceeds with the Cross-examination of John Fleming Duany.

820. *By Prisoner.*] On Saturday, in cross-examination before this Court, you stated that "As I heard two volleys of the gun, and I thought they had finished, I peeped out." Were you not asked by the Royal Commissioners this question, "How many volleys had been fired before that (meaning the last man you say you saw shot)? Did you reply, "I did not notice how many volleys; I did not keep count"?—I believe I did say that to the Commissioners; I meant, I did not count the guns; but that there were two volleys before I looked out. 29 October 1866.

821. Were you asked this question by the Royal Commissioners, "Was he (meaning one of the prisoners) standing alone, apart from all the others?" Did you reply, "I could not see the man plain, because it was just at the back of a little logwood?—Yes.

822. Did you further answer, "I could only see the head of the person, I could not see his body?"—Yes, I said that.

823. Did you ever, before the Commissioners in Spanish Town, swear that Hunter said, "You best say your prayers at once," and that he boxed one prisoner in the mouth who endeavoured to speak, and said to prisoner "he ought to have said his prayers since last night," or is this the first time?—I think I stated that in Spanish Town.

824. Did you ever swear before the Royal Commissioners, that Manning said, "You had better not interfere or they will shoot yourself;" or is this the first time you mentioned it?—I am not certain whether I said that in Spanish Town.

825. Do you recollect being asked this question by the Royal Commission (consider before you answer), "Did they shoot one man at a time, he standing alone?" Did you answer, "I think they did." In continuation were you asked, "You think they did; were you looking?" Did you answer to this, "No, I did not give a look"?—I do not recollect; they may have asked me those questions, but I do not recollect.

826. Will you endeavour to recollect whether the following question was put to you by the Royal Commissioners, when you were examined before them: "Did you see him (meaning Doctor Morris) speak to any one? Did you answer "No?" referring to the time when the men were loosed to be shot?—They might have asked me, but I do not recollect.

827. Did you not, in the months of February and March 1866, see large placards or hand-bills all over St. Thomas'-in-the-East, that Mr. Lewis was appointed, by the Royal Commissioners, to inquire into all the matters connected with the martial law in October 1865, and did you give any information to Mr. Maule, Mr. Gurney, or Mr. Lewis before you went to Spanish Town in April?—I did not see any hand-bills, but I heard they

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they were stuck about; the lighthouse where I live is about five miles from all neighbours. I heard that Mr. Lewis was at Manchioneal, but I did not see him. I gave no information to those gentlemen before I went to Spanish Town.

828. Will you now positively swear that from the shop or post-office door (the middle door), where you say you stood, you could see whether the prisoner's head you say you saw fell, forward or backward, or how. Recollect yourself. Would the logwood fence or the distance allow you to do that?—I cannot exactly say whether forward or backward; but the man just drop when the gun went off.

829. You have sworn you are "illiterate." Can you read or write, or keep lighthouse accounts?—I can read and write a little. I do not keep the accounts; the principal lighthouse-keeper does that; I cannot keep the accounts.

830. *By Court.*] Have you, since this trial began, when in company with Mr. Manning, had any conversation with him as to his evidence or your own evidence?—Since the Court commenced I have not.

[The Witness withdraws.

Twentieth Witness for Prosecution.

THOMAS WEDDERBURN, head man of a gang, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

Thomas Wedderburn.

831. *By Prosecutor.*] Do you remember the time of martial law; and where did you live at that time?—I remember martial law; I lived then at Amity Hall.

832. Do you remember going to the Iron Bridge to do anything particular during martial law?—Yes; on a Sunday in October, last year, Zachariah Bayley came and call me, and I went with him to the grass piece at Duckenfield; saw three men tied to the bamboo fence, and we digged holes—a grave to bury them, then loose them off the fence and bury them, in the same grass piece of Duckenfield, by the Iron Bridge there.

833. How many graves did you dig; did you put the three bodies in one grave?—One grave, the three bodies were put in the one grave.

834. How did you put them in the grave. Describe it to the Court?—We put two at the side, that is side by side, and the third at the feet of the others.

835. Were the men dead or alive when you first went to the fence, when you saw them tied?—Dead.

836. Did you know these men; were they friends or family to you?—I do not know them at all, they were no friends or family to me.

837. Were there other people besides you to dig the grave; if so tell as many of the names as you remember?—John Wright, William Huntingdon, Nathaniel Wilkie, Zachariah Bayley, David Thomas, Charles Robinson. There were nine of us digging; just now I do not recollect the names. Yes, I now remember Richard Taylor; Harriett Warren was there, but she did not dig.

838. Did you dig up the bodies of the three men at any time afterwards, and when?—Yes. I did this October.

839. How did you know where to find the grave; is there any mark by which you knew the place at once?—There is a large bastard cedar root at the foot of the grave. I knew it by that.

840. How far from the fence side is the grave; show the Court as near as you can?—The distance is about the width of this room, (*found to be six paces, called by the witness about a yard, but explained by him afterwards as being a mistake in calling it a yard*).

841. Do you know Mr. Manning's shop, which is near to the Iron Bridge?—Yes.

842. How far is the fence from Mr. Manning's shop; the bamboo fence that the three men were tied to?—I think the distance is about as far as from here to the barrack there (*pointing to the soldiers' barracks across the square*), and found on measurement to be about 73 paces.

843. Are you sure the bodies you dug up were taken out of the same grave into which you had put the three bodies in October last year?—Yes.

844. When you dug up the bodies, how did you find them in the ground?—We find them the same way we buried them.

845. Did you observe anything round the waist of any of the men before you buried them?—Yes, one had a thick leather strap round his waist, the other had a leather band.

846. What did you find in the grave when you dug up the bodies?—We found one of the straps the same.

847. Who was present with you when you dug up the bodies?—All those who buried the bodies were the very same who dig them up again.

848. Were any gentlemen present when you dug up the bodies, and do you know any of their names?—Yes, there were gentlemen present, but I do not know their names. A doctor I believe was present counting the bones, but I do not know his name.

849. *By Prisoner.*] What did the persons who dug up the bodies use to dig up the earth and bodies?—They used hoes.

850. How many hoes were used by the nine people?—I did not count the hoes; some have hoes, some have shovels.

851. How many do you think had hoes; how many do you think had shovels; state to the best of your recollection, it only took place this month?—I did not observe in the hurry of digging how many had hoes or how many had shovels.

852. Were there three hoes or five; were there three shovels or five; how can you tell the exact nine people and yet not tell the exact number of hoes or shovels, only this very month?—Well we did not all work together; when one get tired he draw back and other take his place; we work by spell; I think there were four hoes, and I think three shovels.

853. Were hoes and shovels all the tools that were used; will you swear that no pickaxe or crowbar or digger was used; can't you recollect that, only same month; you tell all the rest?—This October when me dig up the bodies nothing but hoes and shovels were used.

854. Did

854. Did you work at the grave in digging up the earth the same as you do in a field, or in a cane piece or in your grounds; in a row, or how?—We dug up the grave same as we dig cane holes, but we did not all work at once.

855. Was the sun so hot that you nine people had to spell each other in this digging into this hole?—Yes.

856. Did you work in spells of four and four, or how many of you take spell when digging the hole at the same time?—Four work first and afterwards the five.

857. You say you found the bodies same as you buried them; did you take out of the hole each body perfect in itself, or in pieces of bones; had not the doctor to count the bones when taken out?—The bodies were not perfect; the flesh was rotting off. We took them out in pieces. The doctor did count the bones.

858. You say you found the bodies same as you buried them. Now did you not take up the bodies in pieces; in bones, one, two, three or more bones at a time; put them down outside, and then take out more from inside the hole?—Yes, first we take out the back bones and the ribs, the head, then the legs and the shank bones.

859. Was the grave long enough to put the one body, which you say was put at the end of the other two, at its full length; or was part of this body placed over or between the other two bodies or any portion of them?—The third body was at full length, but it was placed a little over the other two bodies. *Thomas Wedderburn.* 29 October 1866.

860. You say the hole dug for the full length of the three; why then did you not bury the three bodies each at full length?—The hole was long enough to hold the two, side by side, and then the other at the end; but not wide enough for the three.

861. Did you see the bastard cedar stump there at the time you dug up the bodies; how many Christmases had you known this bastard cedar stump before?—We saw it; we dug the grave by the stump for a mark; I never know of it before, till the time we go to dig the grave.

862. Did you ever kiss the book anywhere in St. Thomas'-in-the-East or in Spanish Town about this story, before this day?—No, this is the first day I kiss the book.

863. *By Prosecutor.*] When you were taking out the bones as you have described, did you see how they were lying, from the way in which you picked them out?—The same way we laid them; the same way we picked them out.

864. *By Court.*] Did you take out a bone the moment you saw it, or did you first lay the bodies bare by clearing off the earth?—As fast as we found the bones, we took them out.

[The Witness withdraws.

Twenty-first Witness for Prosecution.

Harriett Warren, residing at Amity Hall Estate, being duly sworn, is questioned by the Prosecutor.

865. *By Prosecutor.*] Do you remember the time of martial law?—Yes. *H. Warren.*

866. Did you go to Mr. Manning's shop near the Iron Bridge during martial law; and if you remember what time, state it?—I went there last year, October 22nd, a Sunday.

867. Did you see anything particular anywhere near to Mr. Manning's shop; tell the Court what it was?—I saw three dead men tied to the bamboo fence; the fence is on Duckenfield Estate, and it run into the logwood hedge.

868. Did you know the men; if so state their names?—One was Tommy Miles, one Richard Walton, and one is John M'Call.

869. How were the men tied?—Tied behind their backs, and their heads bowing forward, looking down on the ground.

870. Who was there with you; state the names?—John Wright, William Huntingdon, Thomas Wedderburn, David Thomas, Charles Robinson, Zachariah Bayley, Richard Taylor, Natty Wilkie.

871. How did the three men look; did you see anything particular about any of them?—I saw the brain fall out of one of the skulls that was mashed, and one of Mr. Manning's fowls eat them up on the ground; I also saw that Richard Walton had a wound in the side of his belly, a cut that went in one side and came out the other.

872. Did you see the wound in the flesh, or the shirt torn?—I did not see the shirt; I saw the cut in the belly side.

873. Did you see what was done with the dead bodies?—I saw John Wright and the rest dig a hole, and put the three dead men in; I saw them put two side and side, and the other one at the feet, in the middle of them.

874. Where did they take them from to put them in the hole?—They took them from the bamboo fence.

875. Did you see anything round the waists of any of the men?—John M'Call had a leather band round his waist.

876. Were these men creoles, or what countrymen; were any of them family to you?—John M'Call was an African; Richard Walton also African; none of them family to me.

877. Did you go back to the spot where the men were buried; and when, and how did you find the spot; did you have to look about for it, or did you go straight to it?—Yes; I went back; I went straight; I know it by a cedar stump, mark it; I went back this month, this year.

878. Who went with you to the grave when the bodies were dug up; tell their names?—Zachariah Bayley, William Huntingdon, Thomas Wedderburn, David Thomas, Charles Robinson, Richard Taylor, and all went together to dig up the bodies.

879. What did you see done when you went back to the grave?—They dig up the bodies, and lay them on a board.

880. How did they find the bodies?—They find them, two side and side and one at the feet.

881. Was any gentlemen there when they dug up the bodies, and if you know their names, tell them?—Gentlemen were there, but I do not know

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know their names, except that one was Mr. Daniell.

882. Was anything found in the grave besides the dead bodies?—Yes; they find a sixpence and a pipe, and a piece of the leather band.

883. Are you quite certain that the bodies dug up were taken out of the same grave in which Walton, Miles, and M'Call were buried last October?—Yes.

884. *By Prisoner.*] You swear you cannot remember the day or date of this same month this year, when you went to see the grave. How is it that you can remember that the 22nd October last year was the day when you say you saw the bodies at the bamboo fence?—I cannot recollect the day this month when I went to see the grave. I recollect the 22nd October was a Sunday, because I was going to church, and there was no church, so I came back and took off my clothes.

885. Did you ever kiss the book before about all this?—No; I never kissed the book before.

886. Can you read or write?—No; neither can read or write.

887. Did you take any memorandum of the date, 22nd October, at the time, or did any one tell you the date since? or did you get any one to put it down for you last year?—My husband put it down last year on the Sunday.

888. Did you and the other witnesses, who you say were present at the bamboo fence on the Sunday, and who buried the bodies, live about Amity Hall, or in the same district?—We all live in the same Amity Hall.

889. Can your husband read or write?—Yes; he can read and write.

890. When last did you see the paper which your husband put this date down upon?—The week before last, when I come down here.

891. Will you swear that they dug up the bodies, and laid them on a board, or that they dug up pieces of bodies, pieces of bones; one or two bones first, and then one or two bones afterwards, and so on; which is true?—They did not take the bodies straight up, but pieces of bones.

892. Did you know you were going to be examined, and then ask your husband to put it down?—No, I did not ask him; he put it down himself, the day they bury the men, the 22nd.

[The Witness withdraws.

Twenty-second Witness for Prosecution.

RICHARD TAYLOR, Labourer, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

R. Taylor.

893. *By Prosecutor.*] DID you go to Duckenfield grass piece during martial law? what did you see there?—Yes; I went there during martial law. I saw three men tied up to the fence, a bambco fence in the logwood hedge; they were dead.

894. How many people went with you, and wherefrom did they go?—Thomas Wedderburn, Zachariah Bayley, David Thomas, Charles Robinson, John Wright, Natty Wilkie, William Huntingdon, and Harriett Warren; all went from Amity Hall.

895. What day of the week was this?—Sunday.

896. Do you know the names of the three dead men?—No.

897. How did you see the men? How did they look?—They look like dead men, for they were dead.

898. Who untied them from the fence?—I do not know.

899. What did you and the other people do when you got to the bamboo fence?—We dig a hole in the grass piece, and we take the dead men from the fence, and put them, three of them, into the hole.

900. What made the people from Amity Hall go and bury the dead bodies?—I met two black soldiers in the road at Amity Hall, near Mr. Cornwall's shop, and they tell me, three dead men at the bamboo fence; must go and bury them.

901. How did you put the men in the grave?—We put two side and side, and the other one down at the two foot.

902. Did you see anything particular round the waist of any of the men?—Yes; I saw a leather band round one of their waists.

903. How far inside of the fence did you bury the men?—About as far from the fence as I am from that wall (*pointing to the one opposite.*)

904. Have you been back to that grave since that time, and when?—I went back again when we dig them up; I do not recollect the date, and the month slip out of my mind.

905. Whom did you see there?—Thomas Wedderburn, Zachariah Bayley, David Thomas, Charles Robinson, William Huntingdon were there; also Natty Wilkie.

906. How long ago do you think it is? How many weeks past since you dug up the bodies?—About five weeks past now, I think; I guess about that time.

907. Did you see any gentlemen there when you dug up the bodies?—Yes, there were several gentlemen; one was a doctor. (*Witness also identifies Lieutenant Colonel Daniell as one of the gentlemen who were present.*)

908. How did you find out the grave when you went back?—By the bastard cedar stump at the foot of the grave.

909. How did you find the bodies?—Two, side and side, and the third at the feet.

910. Did you take up the bodies whole, or how?—We take up the bones.

911. Where and how did you find the skulls?—Two of the skulls were side and side, and the other one below the two foot.

912. Did you find anything else in the grave?—A little piece of rope, a bit of strap, and a button; and one of the other men find a sixpence.

913. Are you sure it was the same grave you took the bodies out of as that in which you buried the three bodies in October last?—Yes.

914. Before you buried the men, did you see anything particular about the face of any of them?—I saw one of them, the brains coming out of his skull.

It being now 4 p. m., the Court adjourns till 10 a. m., 30th instant.

Fifteenth Day, 30th October 1866.

On Tuesday the 30th of October 1866, at 10 a. m., the Court re-assembles pursuant to adjournment, present the same Members as yesterday, and proceeds with the Cross-examination of Richard Taylor.

R. Taylor.
30 October 1866.

915. *By Prisoner.*] Did you ever kiss the book before in Spanish Town, or St. Thomas'-in-the-East, about this story?—No.

916. Can you read or write?—No; neither.

917. *By Court.*] During martial law, do you remember seeing a party of soldiers march past Amity Hall towards the Iron Bridge?—Yes; I saw them go over the Iron Bridge one day.

918. Did you see more than one party go over the Iron Bridge?—I only see one party go past Amity Hall and over the bridge.

919. Do you know what day of the week this party passed Amity Hall?—I do not remember the day.

920. Was it before or after this party passed Amity Hall that you helped to bury three men?—After they passed.

921. How many days after the party passed did you help to bury the three men?—I do not remember that.

[The Witness withdraws.

Twenty-third Witness for Prosecution.

Zachariah Bayley, Labourer, residing at Amity Hall, St. Thomas'-in-the-East, being duly sworn, is questioned by the Prosecutor.

Z. Bayley.

922. *By Prosecutor.*] Did you go to the Iron Bridge, or near to it, during martial law; and if you remember the day of the week, mention it?—I went there to bury three bodies; it was a Sunday.

923. What caused you to go to the Iron Bridge to bury the bodies?—Two soldiers, black soldiers, came to me, and told me to go bury three bodies, and get many others with me. When I go to the Iron Bridge, I saw the three men tied on to the bamboo rail; this rail is in the logwood fence; but the place where the men was tied was made of bamboo. The three men were dead. When I got to the place, I dug a grave on Duckenfield land, near by where the men were, about half a chain. We go and cut them off from the fence and bury them. We bury them with their heads westward; two, side by side, and the other was below the two, at the foot of the other two.

924. Could you know the place of the grave again?—Yes; I have a mark, a bastard cedar stump mark it.

924*. How were they (the prisoners) tied to the fence; and did you see anything particular about them?—They were tied with their hands behind their backs; I saw the brains of one hang over his face; the others had blood all over the face.

925. What do you mean by burying them with the heads westward; which ——

> The Prosecutor requests permission to withdraw this question; permission granted; and question withdrawn accordingly.

926. *By Prisoner.*] Have you ever kissed the book to this story in Spanish Town, or St. Thomas'-in-the-East; is this the first time?—This is the first time I have kissed the book; but I gave evidence at Golden Grove.

927. Will you swear that you gave any evidence on oath before the Queen's Commissioner, Mr. Maule; or to this gentlemen, Mr. Lewis, at Golden Grove?—The only evidence I gave at Golden Grove was to Mr. Jackson and another gentleman (identified as Lieutenant Colonel Daniell), and that was not upon oath.

928. Can you read or write?—I can both read and write.

[The Witness withdraws.

Twenty-fourth Witness for Prosecution.

Charles Robinson, Labourer, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

C. Robinson,

929. *By Prosecutor.*] Did you go to the Iron Bridge, or near to it, during martial law; and what did you see there?—I only go on a Sunday, and bury three men. When I go, I saw the three men tied to a bamboo with their hands behind them, and they bow upon their knees this way (*described by hanging the head and body forward*), and we dig the hole, and put the three bodies in; two side by side, the other at the foot of the other two; and I saw one with a leather band, like what I have on now.

930. Were the men dead or alive when you first saw them?—Dead.

931. Did you see anything particular about any of their faces?—I saw one where the marrow run out of his head.

932. Did you know any of these three dead men?—No.

933. Did you go back to the grave, and when?—I went on a Wednesday in September of this year; I think about the 26th. Thomas Wedderburn, John Wright, Zachariah Bayley, William Huntingdon, Natty Wilkin, Richard Taylor, David Thomas, Harriett Warren, all these went with me.

934. Did you bury the bodies; you alone, or did any one help you?—Many more besides me; the same men.

C. Robinson.

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935. Did any gentleman go with you on 26th September; and if you know, tell their names or point them out?—The witness identifies Lieutenant Colonel Daniell and Mr. Jackson, as having been present with him, 26th September.

936. Did you find the bodies, and how did you find them?—Don't find the bodies; find the bones; find them in the ground, where the dust eat off the flesh.

937. How did you find out where the grave was?—Because we mark it by a bastard cedar stump which was at the foot.

938. Where did you find the skulls?—We find two, side and side, and the one at the feet.

939. Did you find anything besides the bones in the grave?—We find a sixpence and a pipe, and the leather band which we bury him in.

940. Do you remember the date when you buried these men, or the month?—In October last year; I do not remember the date. It was a Sunday. We hear it was on a Saturday they shoot.

941. Did you see any soldiers pass through Amity Hall to go towards the Iron Bridge about that time?—Yes; last year October; but I do not remember what the date was.

942. *By Prisoner.*] Are not you and all the other persons whose names you have just mentioned as going with you to the hole, or many of you, staying together down in Kingston since you came up from St. Thomas'-in-the-East to this Court?—I have not been living with any of those people since I came to Kingston. I live in Orange-street; they live in Rae Town.

943. How many are living in Rae Town?—They are all living in Rae Town; eight of them.

[The Witness withdraws.

Twenty-fifth Witness for Prosecution.

NATHANIEL WILKIE, Labourer, a Creole, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

N. Wilkie.

944. *By Prosecutor.*] Do you remember martial law?—Yes.

945. Did you go to the Iron Bridge in martial law time, and what did you see?—I went to the Iron Bridge in martial law time. It was on a Sunday, but I not recollect the date or the month. I saw the three dead men tied upon a fence, a bamboo fence, on Duckenfield. The bamboo fence was a gap in the side of the log-wood fence. I do not know the names of the dead men. We dig a hole and bury them, in the Duckenfield grass piece, by a cedar stump, a bastard cedar stump.

946. How did you find the men when you went?—Saw them tied with their hands behind their backs.

947. Is the place at which you buried them near to Mr. Manning's shop?—Yes.

948. How did you bury the men; in how many graves?—We dig one grave. We laid them two, side of one another, and the other one at the feet.

949. Did you see anything particular about the face of any of the men?—Yes, I saw a hole in the forehead of one, and the marrow running down.

950. Did you ever go back to the grave, and what did you do?—I did go back, and we dug them up. I think it was a Tuesday, about five week ago, but I do not know the month or the date.

951. Did any gentlemen go with you when you dug the bodies up?—Yes; Colonel Daniell was one of the gentlemen; I do not know the name of the other.

952. How did you find the bodies when you dug them up?—We dig up the bones; the flesh rotting off; the bones one by one. We took up all the bones, backbone and everything.

953. How did you find the skulls?—We find them in the hole, the flesh rotting off, and one with a hole in it. We find them straight in the hole. One skull had a hole popped in it; that is the hole where the marrow came out when we bury them.

954. Did you find the three skulls together, close to one another in the hole, or how?—Two of them were together, and the other at the bottom of them two, of their feet.

955. Were these old or young men; could you judge when you saw them tied to the fence?—I could not judge.

956. Did you find anything in the grave besides bones?—I find a strap, rotten.

957. *By Prisoner.*] Did you not swear just now, that when you took up the one skull which was injured, it was popped in two?—I did say it was popped in two.

958. By the word "popped," is the Court to understand you to mean that the skull was broken, cracked, or what else?—I mean that it was split open, it was open at top, but not in two pieces; it was as if a piece was cut out.

[The Witness withdraws.

Twenty-sixth Witness for Prosecution.

WILLIAM BARTLEY, a Labourer, an African, residing at Dalvey, being duly sworn, is questioned by the Prosecutor.

W. Bartley.

959. *By Prosecutor.*] DID you know Tommy Miles, Richard Walton, and John M'Call?—Yes.

960. Tell these gentlemen what has become of Tommy Miles, Richard Walton, and John M'Call?—Sunday, at five o'clock in the morning, I go to the Iron Bridge and saw those three men killed; they were tied to a bamboo fence. Richard Walton and I came in one ship from Africa, and I went up to look at him. When I looked, I looked for some one to help me to bury the men, and I could not find anybody. When I come

I come back from Dalvey I met people from Amity Hall coming to bury the men, and I helped them to dig the hole. When we dig the hole, we loose the three men from the bamboo fence and put them in the hole. When we put them in the hole, I came back; we done.

961. How did you put them in the hole?—We put them in, the heads all the same way; the two short men side by side; the long man at the end, and partly between the other two. This was on a Sunday in October last year.

962. Which part of the two men did the head of the other man come near to?—(*No intelligible reply could be obtained to this query.*)

963. Was the head of the third man at the foot of the other two?—No; the head of the three of them together.

964. Were Richard Walton and Tommy Miles put in the grave side by side?—Yes.

965. Was John M'Caul put in the middle; and was his head on the hip of the others?—Richard Walton was in the middle.

The Prisoner objects to the question as too suggestive. The Prosecutor, therefore, withdraws it; and the Witness was directed not to make any further reply.

966. Did you see anything particular in the faces of any of these dead men?—I see Tommy Miles had a cut on his head, and all the marrow came out of his head; and I see John M'Call had a cut in his neck down to his back; and Richard Walton, I see, had a shot into his neck and a shot into his belly.

967. By *Prisoner.*] Did you ever kiss the book, before to-day, to all this story?—No.

968. Can you read or write?—No, neither.

969. About how many miles do you live from the bamboo fence?—About two miles.

970. Do you know, or not, that some of the people who came with you from Amity Hall and Dalvey to this Court, about this matter, were flogged during martial law time?—I do not know that any were flogged.

971. You see sun get up when you leave home that morning?—No; sun no rise at five o'clock in the morning. *W. Bartley.*

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972. What make you get up five o'clock, to look for people to bury body, when people sleep?—He was my countryman, and he lived same house with me; and, when I missed him, I hear he was killed, I thought I must go see him.

973. You get up, miss him; that night, or when?—I miss him Saturday night.

974. When you leave Dalvey; dark night, else sun do rise?—Before daylight; I could not see my hand.

975. You miss him, Saturday night, from your house at Dalvey?—Yes.

976. You mean to swear, five o'clock morning, in October, you could not see your hand?—I cannot swear that, because I not know the time; but I came out before the sun rise.

977. What make you get up same night look for your countryman, when you hear your countryman kill already?—Because, as we live together, my heart tell me must go and see if they kill him.

978. If it was so dark, that you could not see your hand, how could you see all the particular marks, on the several men, you say you saw near the bamboo fence?—I cannot see when I come out of my house at Dalvey; but when I reached the place where the men were killed, the day was clean, and I could see.

979. Do you mean to swear that you don't know if it was five o'clock, or not five o'clock, or what time; had you a watch?—I cannot tell what time it was; whether five o'clock, or six o'clock. I got no watch.

980. How long you come from Africa?—I cannot tell how long; but I came year before first cholera come.

981. What make you no go see him, when you first hear him kill, if your heart pain you so much, to tell you go and see if they kill him; why go sleep first?—I was afraid to leave my house for fear the soldiers kill me.

[The Witness withdraws.

Twenty-seventh Witness for Prosecution.

William Huntingdon, a Cooper, residing at Amity Hall Estate, being duly sworn, is questioned by the Prosecutor.

982. By *Prosecutor.*] Did you go to the Iron Bridge, or near to it, during martial law, and what did you see?—I did go to the Iron Bridge on a Sunday, last year, and I saw three men tied to a bamboo fence; they were dead. I do not know their names, as we do not live upon the one property; they were tied, behind their back, to the bamboo fence, where it join the logwood fence, at Duckenfield grass piece, near Mr. Manning's shop. Well, after we saw the men tied, we told to go dig a ditch to bury them. We did dig a ditch in the Duckenfield grass piece, about the width of this room from the bamboo fence. When we done we loosed them off the fence, and carry them in and lay them in the hole. We put two, lie close together, and the other at the back side, at the feet of the two. When we done, we covered them up and went away. *William Huntingdon.*

983. Did you go back again to the grave; if so, tell the Court what you did and what you saw?—I went back again, about five weeks ago, when the grave dug up again. When we dig up the grave, we find the men in the same way we put them in. We keep taking away the dirt, and taking up the bones. We take up all the ribs, up to the back-bone.

984. Did you see anything particular about these three men when they were tied to the fence?—I saw nothing particular; they had shirt and trouser; one man had a strap round his waist.

985. How did you find out the spot where the grave was?—There was a bastard cedar stump right at the foot to show.

986. Did you see anything that could make you know what caused these men's death?—No.

987. Did you find anything besides bones in the grave?—Only find a strap, the buttons of the trousers, and a sixpence.

988. *By*

William Huntingdon.
30 October 1866.

988. *By Prisoner.*] How many persons were employed in picking pieces of bones out of this hole; did each man as he dug and found a piece of bone, pull it out and put it on the board near the bank, and so on?—About nine. Yes, each man when he got a bone gave it to the doctor, and he fit it on the table.

989. Did you clean the hole well out of all the bones you could find in the hole?—Yes.

[The Witness withdraws.

The Prosecutor here announces that he does not intend to call John Wright and David Thomas as witnesses, and that he proposes therefore, if the prisoner does not intend to exercise his right of cross-examining these two men, that they should be discharged from further attendance on the Court.

The Prisoner announces his intention not to cross-examine these two men.

At the request of the Prosecutor, the Court, accompanied by the Prisoner, proceeded to the engine house in the barracks, and viewed the bones of three human bodies there laid out.

Twenty-eighth Witness for Prosecution.

Benjamin Cowan Kerr, M.D., Assistant Surgeon 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prosecutor.

B. C. Kerr, M.D.

990. *By Prosecutor.*] Did you go to a place near the Iron Bridge, Duckenfield Estate, in St. Thomas'-in-the-East, and when, and what did you do there?—I went there on 26th September 1866, and was present at the opening of the grave, where I found three male skeletons. I had them put in three boxes and conveyed to Golden Grove, and handed them over to Colonel Daniell.

991. Will you describe the state in which you found the skeletons?—They were quite denuded of animal and visceral matter, except a few of the larger bones of one skeleton, which was slightly covered with brainy-looking matter.

992. Have you any further information to afford the Court?—I found two pieces of strap, two pieces of bowls of pipe, two buttons, and a sixpence in the grave.

993. How deep had these bodies been buried?—One foot seven inches.

994. Did you observe the character of the soil in which the bodies were buried; if so, describe it?—I should say it was a clayey soil.

995. Did you discover any hair?—Yes; two or three pieces of black woolly hair were attached to the bones of the face and head.

996. Did the hair enable you to judge of the colour of the men who were buried?—I should say they were black men, from the colour of the hair.

997. Were the three skulls perfect?—No; one was perfect.

998. How were the other two?—The left side of the skull of one was broken in, the other skull was in several pieces.

999. *By Prisoner.*] Was it a clayey soil mixed with sand?—I saw no sand in the grave.

1000. Was that depth of one foot seven inche ascertained by actual measurement?—By actual measurement.

1001. Are you aware that dark-coloured men of African descent often have whiskers of the pure negro character?—I am not aware; I cannot say.

1002. Did you discover any hair at all on the heads; are not the two or three pieces of hair which you mention, only on the whisker part of one of the skulls, on one side only?—They are on the whisker side of the head and on the head.

1003. In taking up one of the skulls just now, did pieces of that skull fall off in decay?—The piece of that skull was in the cavity of that skull when found, and I had put it in position for the information of the Court. That was the reason it fell off so easily.

1004. You are not asked as to the skull in which the one piece was found inside, but as to the other of the two skulls broken?—There were only two skulls which could be lifted; one was a perfect skull, the other I saw a piece falling off; the third skull, as I have already stated, was found in several pieces.

1005. Was there hair to any extent whatever on the head, or only two or three hairs?—There were two or three tufts of hair; only two or three tufts.

1006. On only one skull were these tufts of hair?—On all the skulls.

1007. Is it possible, in the state of these bones, to arrive at any clear, decided opinion as to the length of time during which these bones must have been lying in the ground; whether for 12 months or upwards?—I should say not.

It being now 4 p.m., the Court adjourned till 10 a.m., 31st inst.

Sixteenth Day, 31st October 1866.

On Wednesday, the 31st of October 1866, at 10 a.m., the Court re-assembles pursuant to adjournment, present the same Members as yesterday, and proceeds with the Cross-examination of Benjamin Cowan Kerr.

B. C. Kerr, M.D.

31 October 1866.

1008. *By Prisoner.*] Is it a fact or not, in medical experience, that human hair is for years and years durable after death?—It is a fact.

1009. Supposing that these bodies all had an ordinary amount of human hair on their heads at the time of burial, does it not strike you, as a medical man of experience, as an extraordinary fact, that there should be only such few little tufts there now of hair, if those bodies were really buried only a year ago, this very month?—My answer to the previous question did not refer to buried hair; I have no experience of buried hair.

1010. Considering the state of these skeletons, is it possible, with any certainty whatever, to identify them as being the skeletons of any particular individual, merely by the bones?—It is not possible to identify the bodies.

1011. In making your measurement of one foot seven inches, is the Court to understand that you only measured the depth of the hole as you actually found it, from its level at the surface at that time?—The Court is to understand that I took it from the level of the ground, immediately after the removal of the skeletons.

1012. Then, having no information, no allowance could be or was made for any probable natural sinkage or for any probable waste of covering or embanking of the earth for any period whatever?—It was the side, the depth of the grave I measured, so every allowance was made for the sinking of the earth; there was no embanking, properly speaking; in fact, there was none at all.

1013. Then is it a fact that when you saw this hole, the upper layer of the earth in it was below the level of the surface of the adjoining ground all round it?—It was slightly below the level.

1014. *By Prosecutor.*] Are you sure the bodies now in the engine house in this barrack-yard are the same bodies which were taken out of the grave at Duckenfield Estate, near to the Iron Bridge, under your superintendence?—I am quite sure they are the same bodies.

1015. *By Court.*] Were there any marks on any of the bones or skulls, such as might have been made by deadly weapons?—There was a hole in one of the skulls, as if caused by the entrance of a bullet; I found no other marks on any of the other bones.

1016. Was that the skull which was broken up, or one of the other two?—One of the other two.

1017. Might such fractures as appear on two of the skulls, have been made in exhuming them. Would a man's foot, if standing on them, even with a thin layer of mould over them, or the tools used, be sufficient to break them, as they now are broken?—Such fractures might have been made in the exhumation, but every care, every precaution, was taken to prevent such. A man standing on one of the skulls, with a thin layer of mould over it, would probably fracture it as it is.

1018. Explain what precautions were taken in exhuming the bodies to guard against fracturing the bones?—There were only one or two men digging at a time. I instructed them how and where to dig. I took the implement twice in my hand to show them how to use it, and I took the greater number of the bones out myself.

1019. Describe the relative positions in which the three skulls were found?—Two were nearly on a line with each other; the third was higher up, nearer the Post-office. Supposing the position of the first two to be about the upper part of my chest, then the place of the third skull would be about where my head is.

1020. Can you describe where the perfect skull was lying, also where the one was that is now broken in pieces?—The perfect skull was the one nearer to the Post-office. I am not quite positive, but I think the skull broken in pieces was lying nearest to the road.

1021. Could you tell with certainty whether that hole (if caused by a bullet) was made by a spherical or a conical bullet; that is to say, by a spherical bullet, such as is used for "smooth-bore," or by a conical bullet, such as is used in an Enfield rifle?—It resembles a hole such as would be made by a conical bullet; such as is used by an infantry soldier at the present day.

1022. If a bullet had entered by the hole you describe, was there a corresponding hole of exit; if not, should not the bullet have been found in the skull, if the precautions taken in exhuming the bodies were as carefully attended to as you relate?—There was no corresponding hole of exit, unless the destruction of the left side of the skull can be called a hole. In that case no bullet was likely to be found in the skull.

[The Witness withdraws.

The Prosecution is closed.

The prisoner, being placed on his defence, requests that he may be granted till 10 a.m. Friday, 2nd November 1866, for the purpose of preparing for his defence.

This application was granted by the Court, which, accordingly, at 12 o'clock noon, adjourned till 10 a.m., 2nd proximo.

Seventeenth Day, 2nd November 1866.

On Friday the 2nd of November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment:—Present, the same Members as on 31st ult.

The prisoner enters on his defence; hands in a written paper, which he requests may be read by the Deputy Judge Advocate. This paper being read in Court by the Deputy Judge Advocate as requested, is marked H, signed by the President, and attached to the proceedings.

The prisoner then proceeds to call witnesses.

First Witness for Defence.

James Harrison, Planter, Hordley Estate, St. Thomas-in-the-East, being duly Sworn, is questioned by the Prisoner.

J. Harrison.
2 November 1866.

1023. *By Prisoner.*] Were you at or near the Iron Bridge with a detachment of volunteers in October last year; if so, state the day?—On Sunday, 22nd October of that year, I was acting as guide to the volunteers. We arrived at the bridge about 8 a.m. We made a partial halt at the bridge to enable the horses to go over two and two, the bridge being weak; forming up as we got over on the other side. By the time we were all over, it must have taken a quarter of an hour.

1024. About how many volunteers were with you there?—Between 40 and 50, I think.

1025. Where were you coming from, and where were you going to?—Coming from Golden Grove, and going towards Amity Hall Works.

1026. Was this a mounted body?—We were all mounted.

1027. Do you know Thomas Wedderburn, Zachariah Bayley, William Huntingdon, Natty Wilkin, Richard Taylor, David Thomas, Harriett Warren, William Bartley; and did you see any of them at or near the Iron Bridge, or by the Grass-piece, or at all about there that morning, or on the road at all, as you passed?—I know them all, except William Bartley, whom I do not know by that name; they are all employed by me as attorney for the estate; Wedderburn and Harriett Warren are head people on the estate, and they are more or less in daily contact with me; I did not see one of them that day.

1028. Did you meet, or see, or hear any persons to the extent of eight or nine persons with shovels and hoes, in or near the Grass-piece, or on the road that morning?—I never met one person with hoe or shovel; if I had, being in the advance, I should have been sure to have stopped and asked them what they were doing.

1029. Did you see or hear any persons digging by or near the bamboo rail fence in the logwood fence?—No; I may add, that I looked anxiously into that Grass-piece, because I expected to see a colt of mine which had got astray, and which I had been told was there. As the logwood fence was so high, I rode up to it and stood up in my stirrups to get a good view, but I could scarcely see the grass; I did not even see a John crow, which I may mention is the practice to look for in cases of lost animals, as in the event of their being dead or dying, these birds are always to be seen hovering about the place.

1030. When persons in the position of the persons whose names were read to you, are at work in digging, are they usually silent?—They are very noisy; chattering and laughing.

1031. Must you have seen these eight or nine people or heard their voices, had they been there that morning?—I must have heard them, even if I did not see them; everything was very silent that morning, and I would have heard the chopping of the grave.

1032. Did you see any people with digging implements at all?—None whatever.

1033. If any persons had been shot the previous afternoon and left there exposed during the rest of the day and the night till 8 or 9 or 10 o'clock next morning, would you not have expected the common crows of the country to be hovering about the place; did you see any at all that Sunday morning?—We should have seen crowds of them; but, as I have already said, I did not see one; if persons had been shot there at 12 o'clock the previous day and left there, we should have smelt them ourselves, as the sea breeze blows from that direction.

1034. Did you see or hear of any dead bodies that Sunday morning at all as you were passing on this route?—None; I heard of none; nor did I see any.

1035. Do you know that the field called the Grass-piece also has canes growing in it, as well as grass?—The Grass-piece is the outer edge of the Cane-piece.

1036. Can you tell the Court whether or not this Grass-piece logwood fence was higher in October 1865 than it was in September last, or is now?—Considerably higher; it was trimmed in September last. In October 1865 the sprouts or shoots were seven feet higher than the logwood hedge, making the total height about 12 feet.

1037. Have you recently ascertained whether or not a person standing at or in Manning's shop could, in 1865 or even now, see the bamboo rail or any persons tied to the rails?—I cannot speak of 1865, except of course from inference, but the day before yesterday I placed a gentleman, named McFarlane, overseer at Amity Hall, who is about 5 feet 10 inches high, and wore a hat with a broad white band, at the bamboo fence; I then went to each of the three doors of Manning's shop, and stood on the topmost step of each; I could not then see anything of Mr. McFarlane or of the broad band of his hat, even by peeping through the interstices of the logwood fence; the sprouts of the logwood fence are now from two to four feet high, or rather, I should say, the shoots; the sprouts being those which spring from the bottom of the hedge. Under these circumstances, I am of opinion that, in 1865, from the same spot, nothing could have been seen of persons at the bamboo rail.

1038. What is the general nature of the soil about the locality of this hole, out of which bones are said to have been dug, near by the bamboo fence, inside

inside the Grass-piece?—What we generally call "light alluvial," or "brick-mould;" the substrata becoming more and more sandy the deeper down you go.

1039. Is that the same sort of soil at the place where Mr. Hire is buried?—Where Mr. Hire is buried, which is in the garden, the soil is the same, as he had carted this very soil up to form the garden beds; but the natural soil round Mr. Hire's grave is very stiff, and strongly impregnated with iron, and is very red.

1040. Can you tell the relative appearance of any graves you may have seen about this district of persons killed about the same time in October last year; particularly as to the remains or height of any mound or covering on the grave, or appearance of age?—I have seen no other grave but that of Mr. Hire's, which I saw about two months ago, and which then had a mound of about four inches over it. He was buried very shallow, according to the report of the man who buried him; for this I do not know of my own knowledge.

1041. Is there any ditch or trench so near this same hole in the Grass-piece by the fence as to drain into the hole, and so render it more damp than usual?—I never noticed any.

1042. Have you seen the mounds about Morant Bay of bodies killed and buried during martial law. Are they still of a good height?—Yes; I passed two on my way up here; they are still high. I should say between four and five feet.

1043. Were you at Golden Grove, 21st October, last year?—Yes; I arrived there with Captain Adcock's flying column. We marched from Morant Bay, and arrived at Golden Grove a little before 2 p.m.; 2 o'clock struck just after we arrived.

1044. Is the soil about Morant Bay of the same general character as that about Duckenfield?—From casual observation I should say not. I never minutely examined it; but I should say that the soil about Morant Bay is a mixture of clay and gravel.

1045. About what time of the 21st October 1865 did Ensign Cullen arrive at Golden Grove?—Close upon 3 p.m. It must have been a little after 3 o'clock, I think. Some time before our party arrived at Golden Grove, two troopers were sent on at full gallop to call in Ensign Cullen's party from the Iron Bridge, and to meet us at Golden Grove. The names of the two troopers sent on for this purpose are Berry and Brandon.

1046. Did any troops of any kind arrive at Golden Grove on this same Saturday, after Ensign Cullen's detachment; and, if so, from which direction did they come?—A few straggling black troops arrived from the direction of the Iron Bridge. They came in between 5 and 6 p.m., about dusk.

1047. Are you aware whether or not several bodies of troops, soldiers, volunteers, and maroons, were about that quarter, about this same week, of this Saturday and the next following one?—They were about the following week; there were bodies about every day up to the 28th of the month; but I am not aware of any troops being about the week of 21st, except our own force. This is all I know of my own knowledge.

1048. About how many stragglers (soldiers) do you think came in on 21st October 1865, to Golden Grove after the time of Ensign Cullen's arrival?—About 8; they were very obstreperous at not having received their rations. My attention was called to the altercation between them and Quartermaster Drummond, he telling them that they should have come in with the others; and they replying that they had fallen behind because their feet were sore, or something of that kind.

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1049. Are you aware whether or not the frequent straggling of the soldiers was a matter of great complaint during martial law?—Yes; Captain Hole requested me to let him know whenever I saw anything of the kind; that he had punished several for it, and that he would do so in all cases where he could get proof of it. I am speaking now of black soldiers. This seemed to have given Captain Hole great anxiety, as he repeated his request more than once to me.

1050. Have you recently measured any distances of different places from each other about this spot (the Post-office, &c.), and the possibility of seeing from one place to another place by a person standing at some particular spot?—I have measured several of the places, such as the distance from the bridge to the bamboo rails; the distance of Manning's shop from the bridge; and the length of Manning's shop. The former, that is from the bridge to the bamboo rails, I find to be about 80 paces; from the shop to the bridge in a straight line about 20 paces; and the length of the shop about 15½ paces. As regards the latter part of the question, I have already stated the impossibility of seeing a man at the bamboo rails from Manning's shop doors, and from the bridge also, from the blacksmith's shop obstructing the view.

1051. You were resident about this same district the whole of last year and this year, going amongst all classes; when first did you hear of any report of the killing of the three persons, the subject of this inquiry?—About the beginning of March last, and then through the newspapers. I was very much surprised at it, because I had constantly seen the persons who said that they had dug the grave, and they had never said a word to me about it. I may mention that the people for miles round are in the habit of coming to me, as a magistrate, and as a person whom they have known for a long time, to consult me about their quarrels, and to ask my advice in their affairs; and, as I have already said, not one of them ever mentioned this subject to me.

1052. Do you know what use was made of this Grass-piece formerly?—I have only known it as a Grass-piece for 11 years.

1053. Are you a justice of the peace, and have you experience as to the credibility of witnesses of the lower orders as to dates, time, distance, or numbers; as a general rule, can they be relied on in these respects with any certainty?—I am a justice of the peace for St. Thomas-in-the-East, and, as a rule, no reliance can be placed on any statement relating to time; that is, to computation of time, or distance, made by the lower classes.

1054. Have you had opportunities during martial law, and while Ensign Cullen was in St. Thomas-in-the-East, of judging of his character; do you believe him to be a humane man or otherwise?—He was about the first regular officer whom I knew as being employed in the suppression of the rebellion, having been in command of the advanced guard sent by General Nelson from Port Morant to Bath, to relieve the ladies and children pent up in that district. This was about the

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the 13th October 1865, he was sent. I became acquainted with him on the morning of the 14th. His kindness and tenderness, displayed by him at that time to all parties, was much commented on; and to his attention and care several of the ladies and children, I am sure, owe their lives. Amongst the many, there, were my wife and four children. I stated before the Royal Commissioners that I never saw two more humane men, in their conduct towards prisoners at Golden Grove, than Captain Adcock and Ensign Cullen; they were always glad of lessening a punishment, if anything could be said in favour of a prisoner. I mention one incident in which Ensign Cullen was individually concerned. A lot of prisoners were over in the Mill House at Golden Grove. Ensign Cullen asked me to accompany him to go and look at them, and hear what was said against them. The charges against them were for plundering, and they were all women and children. He said, "I can't punish these poor creatures; while to let them go without some cause, they may think wrongly of. Will you intercede for them?" I said, "Certainly." He then said, "Mr. Harrison has interceded for you; you may go this time, but if you are brought up again, I do not know what I shall do with you all. You are now dismissed." There were about 20 or 30 prisoners in this batch.

The witness adds, in explanation of the phrase "I do not know what I shall do with you all," that it was intended to frighten the prisoners, and was used as a threat for that purpose.

1055. Do you know George Manning. What is he, and what is his general character?—I know George Manning. He is by profession a shopkeeper and postmaster. Since June 1865, he has been considered by all planters and well-disposed persons whom I have come across as an agitator, and a great sympathizer with the Underhill movement.

The prosecutor here requests that he may be permitted to postpone his cross-examination of this witness till to-morrow, 3rd instant. The prisoner not objecting, the Court sanctions this arrangement.

[The Witness withdraws.

Second Witness for Defence.

Alexander Chisholm, Planter, residing at Golden Grove, being duly Sworn, is questioned by the Prisoner.

A. Chisholm.

1056. *By Prisoner.*] Do you know the place called "Grass-piece," at Duckenfield, near the Iron Bridge?—I do.

1057. Did you go there at any time this year, or last year, and about what time?—I pass the place almost every day, but one particular day I went there was the 28th March 1866.

1058. Did you see at any time the hole or place out of which some bones were recently dug?—Yes; I saw a place there which looked as if some persons had been buried there; it looked old, as if it had been there for years.

1059. Describe as nearly as you can the appearance of this hole or grave at this same time; was it sunk, or how. Was grass growing or not on it. Did it look fresh or old?—It was sunk some seven or eight inches. I did not measure it, but it looked that. The grass and bush was growing over it; some 24 inches high. It looked quite old. One had to look minutely to see if there was anything that looked like a grave. This was in March last.

1060. You say it looked; many years do you think?—Yes. I should say it was many years. If it had been fresh it would have had another look altogether; the bush would not have been so high.

1061. Can you tell the Court if there are any signs of graves, such as mounds in this Grass-piece, or any about the hole, out of which some bones were lately dug?—There are several mounds. During cholera in 1850, bodies were buried all about.

1062. If labourers, eight or nine in number, with hoes or shovels, were digging a grave there on a Sunday morning, would persons passing by or about the Iron Bridge have been likely to hear the voices of the people, or what the people were doing?—Yes; they must have heard the voices; and if passing by might have seen them, but not from the Iron Bridge; though there they might have heard the voices. If persons had been going down the Holland Bay road, they would have seen them.

1063. Were those mounds about this hole or grave, old or fresh looking?—They all looked old. There was grass growing on them.

1064. If any persons were killed and exposed to the atmosphere about noon, on a Saturday, tied to the bamboo fence all that afternoon; all Saturday night till Sunday about 8, 9, or 10 o'clock, would the bodies be expected in that climate of St. Thomas-in-the-East, to stink, and attract crows and passers-by?—Yes, it would be expected; any dead carcass of man and beast would not stand long, but would attract the vultures.

1065. Do you know George Manning; what is he? what is his general character in St. Thomas-in-the-East?—I know George Manning; he is one of those local preachers calling meetings, making speeches there, and agitating the people. He is also shopkeeper and postmaster.

1066. When persons of the labouring class are employed at work, but more especially at digging, are they usually silent?—No, not at all times.

1067. Has Manning any place near Golden Grove House; about a mile from it?—Yes; he keeps a chapel there, and holds meetings.

1068. How far is that hole or grave from Manning's chapel, near Golden Grove?—From the Grove to the chapel is about two miles.

1069. If a person was standing in the Grass-piece opposite Manning's shop, where the canes are growing, could he easily see the bamboo fence in the logwood fence, and anything upon it; and all inside and outside the bamboo fence in front of it, or the back of it?—I cannot answer that question. I know from the outside, but not from the inside of the Grass-piece.

1070. Have you ascertained whether or not, persons standing at or in the shop could see the bamboo rails of the fence, or men tied to the bamboo rails of the fence, in the logwood fence round

round the grass or cane piece opposite Manning's shop?—I have examined it over and over again. I have done so this week, and you cannot see the bamboo rails, nor men tied to them.

1071. Was all inside the grass piece, low grass or low canes; or partly grass and partly canes?—One side is grass, and then you come to the canes; this was so last year, and is so now.

1072. Was the logwood fence higher or lower last year than it was in September this year, or is now?—It was higher in October last year; it is lower now, as it has been recently cut.

1073. Could persons standing at or in the shop, see soldiers standing firing right opposite the bamboo fence, right across on the other side of the road, considering how the logwood fence was last year?—On account of the height of the logwood and the angle of the road, it was impossible.

1074. Do you know whether or not during the week of this Saturday spoken of, the 21st of October 1865, or during the following week, there were bodies of troops, soldiers, volunteers, and Maroons about this same post-office district?—I was a volunteer myself at the time, and know that on the Saturday mentioned there were soldiers, black soldiers, and volunteers about; and that they were about all the following week. There were Maroons close by, but I did not see them.

1075. Being a volunteer, did you or not hear of complaints of frequent straggling of soldiers, and the difficulty of keeping them in order?—I did.

1076. Do you know Captain Mendes, a Maroon; was he coming backwards to Golden Grove about this same time?—I know him perfectly well, and he was always passing backwards and forwards through Golden Grove; but I am not sure of the date on which he first came; but I know it was before Captain Adcock left, because he gave him some rations.

1077. Do you know Anderson, Donaldson, Manning, Cyphus Wills, Colson, Phillips, and the other witnesses from St. Thomas-in-the-East, examined for the prosecution? are they persons who would have opportunities of seeing Ensign Cullen while he was about Golden Grove during martial law?—Except Colson, I know all those named. They would have opportunities of seeing Ensign Cullen at that time; they would have every opportunity if they came in the way. *A. Chisholm.* 2 November 1866.

1078. Did you see Mr. Berry and Mr. Brandon (volunteers) at Golden Grove on the 21st October 1865, when Captain Adcock was there?—Yes.

1079. Were they (Mr. Berry and Mr. Brandon) ordered any where by Captain Adcock on that Saturday, 21st October 1865; and if so, about what hour of the day did they go?—They went to the Iron Bridge on that Saturday; I am sure it was between 3 and 4 p.m., but I cannot speak to minutes.

1080. After they went on the order, did Ensign Cullen and the detachment come back with them?—They all came back about the same time, but I was busy myself at that time, and did not notice particularly; but I think they all came in together.

1081. Was Ensign Cullen at Golden Grove at your house in October last year? When did he first come, and when, at the last, did he leave Golden Grove? State the hour at which you believe he came?—He came there on the 21st October last year, but I cannot state exactly the time, further than that it was between 3 and 5 o'clock p.m.; I think he was there about 10 days, but not having taken the dates, I cannot be exact.

1082. Have you had opportunities of forming an opinion on the character and conduct of Ensign Cullen during martial law, and while he was in St. Thomas-in-the-East; is he a humane man, or otherwise?—I had opportunities of forming an opinion as to his character; he is a gentlemanly and humane man.

It being now 4 p.m., the Court adjourns till 9 a.m., 3rd instant.

Eighteenth Day, 3 November 1866.

On Saturday, the 3rd of November 1866, at 9 a.m., the Court re-assembles, pursuant to Adjournment. Present, the same Members as yesterday, and proceeds with the Cross-examination of Alexander Chisholm.

1083. *By Prosecutor.*] How long have you lived at Golden Grove?—Nearly seven years.

1084. What kind of grass is that in the grass-piece of Duckenfield, opposite Manning's shop?—Guinea grass.

1085. Is the grass usually fed down, or how otherwise is it disposed of?—At one season of the year it is fed down at times; it is generally fed down with horses, and then allowed to grow again; it may be cut, but I have never seen it cut.

1086. How many crops of guinea grass per annum does a guinea grass-piece in your parish give?—According to the soil; some two, and some one.

1087. In what parts does the grass grow the rankest; in level ground, or in hollows or dips of the land?—Generally in the dips of the land, where the soil is most fertile.

1088. In 1850, where were you living?—In the Rhine Estate, close to Bath.

1089. How far is the Rhine from the Duckenfield Suspension-bridge?—There are no milestones; but it is about six miles, as near as I can judge. *A. Chisholm.* 3 November 1866.

1090. How many bodies (besides the three the subject of this inquiry) have you ever seen buried, or exhumed, in the grass of Duckenfield, you have been speaking of?—In that grass-piece particularly I have never seen any; but in that year, 1850, during the cholera, I know that bodies were buried in every field by the road side, from Holland Bay to Bath.

1091. On 22nd October 1865, were you on service with the volunteers, and where?—Yes, at Golden Grove.

1092. Were you all the day at Golden Grove; if not, say where you were?—I was half the way with the volunteers that day when they went out; I went as far as the Iron Bridge with them, and then turned back to Golden Grove.

1093. Are you speaking of Saturday or Sunday,

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day, and of what hour; when did the volunteers leave Golden Grove?—I am speaking of Sunday, but I cannot give the hour; the volunteers left Golden Grove after breakfast, but I do not remember the hour.

1094. What time did you have breakfast?—I cannot tell that morning what hour it was.

1095. Was there service that day at Golden Grove Church that morning, and at what hour does the morning service begin?—The morning service usually begins at 11 o'clock, but there was none that day.

1096. What is the distance from Holland Bay to Bath?—About 10 miles, I should call it; there being, as I said before, no mile stones about there.

1097. How do you know there was no service on 22nd October at Golden Grove; where were you at 11 a.m.?—I was about the estate all day; when I went to the Iron Bridge, I was not off the estate, as the line of the estate runs close to the bridge; there was no clergyman there that day; you can hear the church bell at the Iron Bridge, and further still.

1098. Who was in command of the volunteers you accompanied to the bridge on Sunday, 22nd October?—Captain Adcock; Captain Ford and several others were there, but they were all under Captain Adcock.

1099. Who was the officiating minister at Golden Grove Church in October 1865?—The Rev. Mr. Sloane.

1100. *By Prisoner.*] You say Captain Adcock was in command of the whole; were there then several different bodies with their several captains?—Captain Adcock was in command of a few white soldiers, and of the whole party; Captain Astwood was there with some of his troop, but I do not know how many; and Captain Ford also had some of his men there, but I do not know their numbers. Captains Astwood and Ford were mounted volunteer officers.

1101. You say you rode as far as the Duckenfield Bridge with the volunteers on 22nd, and that you turned back; would you have turned back if you had seen or heard there of three dead bodies, or had heard or seen any persons with hoes or shovels digging, or going to dig, a grave by the bamboo rail fence?—No; I would have gone to see it, if such a thing was to be seen.

1102. *By Court.*] What attracted your attention to the grave or hole in the grass-piece at Duckenfield on 28th March 1866?—I had been in Kingston, and had heard of the matter there; and was asked to go and see what there was there in the grass-piece; I was shown the actual place by a man named Bryan, a book-keeper on the Duckenfield Estate.

1103. What do you mean by "bush" on the grave; is it grass?—I think it is broomweed, they call it; it was growing with the grass, to the height of from 18 to 24 inches.

1104. You said that in consequence of the height of the logwood fence, and the angle of the road, a person at the post-office could not possibly see soldiers drawn up to fire opposite the bamboo rails on the other side of the road; how do you know this; did you place any one on the spot opposite the bamboo rails, and yourself stand at the post-office, for the purpose of ascertaining, or is it merely an opinion on your part?—You cannot see within a chain the spot where the soldiers were said to be, opposite the bamboo rails; I did not place any one on the spot to ascertain this, but I measured the distance from the shop, till I came to the place where I could see the spot.

1105. You have said that on Sunday morning, 22nd October, you went with the volunteers as far as the Iron Bridge, and then turned back; do you mean that you passed Manning's shop, and went right up on to the suspension-bridge, or did you turn before you reached Manning's shop?—I passed Manning's shop, and went up to the abutment of the bridge, but did not go over.

1106. You said you know that bodies were buried in every field by the road-side from Holland Bay to Bath in 1850; did you yourself see any of these burials; could you now identify any of these graves?—I have seen several of these burials, but I could not now identify the graves, owing to the lapse of time, to cultivation, and other such causes.

[The Witness withdraws.

First Witness for Defence recalled.

JAMES HARRISON is recalled, and Cross-examined on his former oath.

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1107. *By Prosecutor.*] AFTER you left the Iron Bridge on Sunday morning, 22nd October 1865, where did you go?—To Amity Hall Estate Works and negro houses.

1108. Did you remain there the rest of the day; and if not, when did you leave, and where did you go?—We went from the negro houses to the "Top" or "Buckra" House on the hill; from there through part of Hordley negro houses, and thence on to Wheelerfield Estate; thence through Suffolk Park Pen on to Batchelor's Hall Pen; crossed the river and went through Plantain Garden River Estate; thence on to Winchester Estate; thence to Golden Grove, our head quarters. I did not notice the hour we left Amity Hall, but I should say between 9 and 10 a.m.

1109. How far is Amity Hall "Top" House from the Iron Bridge, and how far from the negro houses?—I should think it was three quarters of a mile from the Iron Bridge to the "Top" House, and about one-third of a mile from the "Top" House to the nearest negro house, but these negro houses are very scattered.

1110. Where did you cross the river on your return; how many miles above or below the Iron Bridge?—We crossed it at the Plantain Garden River or Batchelor's Hall fording; it is called by both names. I should say it was about four miles westward, or above the Iron Bridge.

1111. At what time did you arrive at Golden Grove on your return; if on the same day, mention the hour?—It was, I think, a little after 4 p.m. that day when we returned to Golden Grove.

1112. Was there service at Golden Grove Church on 22nd October?—There could not have been any service that day, as the clergyman, Mr. Sloane, was in Kingston. The rector, Cooke, was a refugee in Kingston also, and Mr.

Mr. Herschel, the minister at Bath, was murdered. Those were the only three ministers in the parish.

1113. You stated in your examination that the work-people were very noisy, chattering or laughing usually; did you observe any change in their demeanour during martial law?—If I am to understand that the question refers to them when at work, I reply that when at their work, during martial law, they were more cheerful and noisy than usual; and they continued so till the Royal Commission came out, after which they were sulky and impertinent.

1114. I allude to the first and second weeks of martial law particularly; please say as to what you observed of their demeanour at that time?—There was nobody at work those two weeks, that I saw.

1115. You state that the logwood fence was trimmed in September last; is that the usual month for trimming, and if not, what is the usual month?—The trimming of the logwood fences depends very much on circumstances, according to whether we can spare labour, and according to the weather.

The Witness requests permission to amend his reply to Question 1112, and adds that there was a fourth clergyman at Manchioneal, the Rev. Evan Jones, but that at that time he also was a refugee in Kingston.

1116. *By Court.*] You said that a few straggling black troops, about eight in number, came in from the direction of the Iron Bridge to Golden Grove about 5 p.m. on 21st October last year; to what detachment or party of troops did they belong?—Judging from their uniform, and the way in which they were received by the other black troops at Golden Grove, I should say they belonged to the company which accompanied Ensign Cullen; I saw nothing to make me think otherwise.

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1117. Do you know the bamboo fence to which it is alleged the three dead bodies were tied; and if so, had there been dead bodies tied to that fence on 22nd October 1865, at the time you were at the Iron Bridge on that day, could you have seen them from any spot you were in?—I know the bamboo fence; from the height of the logwood fence I am not aware that I could have seen them from any spot I was on that morning.

1118. Is the spot (*showing Witness the plan*) marked E, where you stood up in your stirrups to look over the logwood hedge, included in the limits of this plan; if so, point it out?

The Witness shows the place, which was close up to the logwood fence, and about opposite Manning's shop, and adds that there is a large cotton-tree there, under which he thought his missing colt might be.

[The Witness withdraws.

Third Witness for Defence.

Charles Henry McDermott, Planter in the Parish of St. Thomas-in-the-East, on the Wheelerfield Estate, being duly sworn, is questioned by the Prisoner.

1119. *By Prisoner.*] Do you know the grass-piece by the side of the road near the Iron Bridge on Duckenfield?—Yes.

1120. In your capacity as a planter and as a book-keeper at Duckenfield, have you for the last year or so been obliged to go into this grass-piece?—Yes.

1121. Would you, as such, have opportunities of seeing any fresh graves which might have been made in that grass-piece during the last 12 months?—Yes, I had several opportunities.

1122. Had you a gang at work there shortly after martial law, and afterwards; did you go to the gang, and line out the work?—I had two men, two scythe men, cutting grass there. I went to the men and lined out the work. This was shortly after martial law.

1123. Do you know the bamboo rail fence there; is it a common draw rail for horses, cattle, and carts?—Yes; it divides the grass-piece into two, and is a common draw rail.

1124. Is that bamboo rail fence of which you speak by the road, towards Holland Bay, but near the Iron Bridge?—Yes, it is near the Iron Bridge.

1125. Is the grass-piece you speak of that in front of Manning's shop, across the road?—Yes, in front of the shop.

1126. Is this division fence made of bamboo rails right across?—Yes, right across the grass-piece, and abuts on the embankment.

1127. Do you know where the bamboo fence is which leads from the Holland Bay road into that grass-piece?—Yes; it is a bamboo rail about 12 feet wide; a draw rail to admit a wain or cattle into the grass-piece.

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1128. Is that bamboo draw rail fence then, a common entrance, often used?—Yes, it is often used.

1129. Can you tell the Court whereabouts in the grass-piece the gang was working?—They commenced scything at the gate, which I have just been speaking of, and cut down all the grass in the piece.

1130. Would cattle, carts, and wains have to pass over within five or six yards from that rail fence on the grass-piece on entering, and going straight on?—I dare say about that distance, as cattle never draw very straight, but zig-zag about.

1131. Do you know where the place is, inside this grass-piece, out of which some bones were dug up, at the instance of Colonel Daniell, near this same bamboo rail draw fence, and in which three persons killed are said to have been buried in October 1865?—Yes, I know the place; but I never saw any grave there, though I have been through and through the place.

1132. If there had been any fresh grave there then, while your gang was working last year, must you certainly have seen it?—I should think I would have seen it, because the grass was cut down.

1133. Were you in St. Thomas-in-the-East the 21st or 22nd October 1865; did you give any witness for the prosecution from St. Thomas-in-the-East (Phillips, for instance), or any other, any information about the 21st and 22nd being the

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the days on which three men were killed and buried in the grass-piece?—I was at Albion Estate; that is where I escaped to, and where I was on the 21st and 22nd October, and I did not return to St. Thomas-in-the-East till 28th of that month; I never gave Phillips or any other person any information about three men being killed and buried; I never even saw a prisoner taken up in St. Thomas-in-the-East.

1134. *By Prosecutor.*] What name do you give the grass-piece opposite the shop to distinguish it from that along the Holland Bay-road?—They are called the grass-pieces; they have no separate names. It is all one grass-piece, and there is a cotton-tree growing in it.

1135. Which grass-piece did you refer to as being cut down by the scythe men?—That grass-piece in which the cotton-tree grows.

1136. What is your position at Wheelerfield; are you owner, lessee, book-keeper, or how otherwise?—I am book-keeper at present at Wheelerfield.

1137. Do you mean that you cut down the whole, on both sides of the bamboo division fence?—Yes, on both sides.

1138. Can you undertake to state positively that the scything you speak of did take place after the 22nd October 1865?—Yes.

1139. What is the acreage of the whole grass-piece, including both divisions?—I cannot say.

1140. Did you see the exhumation of the three bodies on 26th September last, in Duckenfield grass-piece?—No, I saw no bodies dug up; I was not on the spot.

1141. Did you ascertain afterwards the precise place from which the bodies had been dug up; and if you did, how, or from whom?—I did not ascertain the precise place; I only heard two parties speaking of it.

1142. You have stated that you lined out the work of cutting the grass of the entire grass-piece; state in what manner you did this, and on what principle you paid the men, whether by the day or the job, or otherwise?—I used a bamboo rod, 11 feet long, and I gave them 16 of that rod's length, by four in width, for a day's task, and they were paid for by taskwork; they are all paid in that way.

1143. You have stated that you went over this piece as book-keeper, and gave it out to be cut down; state, to the best of your computation and belief, the number of acres?—I cannot say the number of acres; I have never measured it.

1144. How long have you been in the planting line, and when did you become book-keeper at Wheelerfield?—I have been in the planting line 10 years; I became book-keeper at Wheelerfield 20th March 1866. I was book-keeper at Duckenfield from January 1858 till 18th March 1866, and during that time I went to Golden Grove under Mr. Chisholm; but I returned again to Duckenfield, I think it was in February 1865, and there remained till March of this year.

1145. Do you recollect whether or not Phillips, after your return to St. Thomas'-in-the-East, ever asked you to tell him any date, without reference to the alleged shooting of the three men, or to the day on which it took place; if he had, would it have been so extraordinary a circumstance that you must have recollected it?—He did not, as far as I can recollect; I would have recollected it, if he had asked me.

1146. *By Prisoner.*] Who are the persons to whom you referred as having spoken about and described to you this spot, out of which the bones were said to have been dug at the instance of Colonel Daniell in September last?—They were two coloured men at Golden Grove; two of the labouring class.

1147. Has Colonel Daniell had any other grave dug up in this same field to your knowledge, than the one spoken of by all parties?—I cannot say.

1148. *By Court.*] When had you the two scythe men cutting grass in Duckenfield grass-piece; in what month, and on what date?—I think it was between November and December.

1149. On what date last year was the logwood fence at Duckenfield grass-piece, from opposite the Post Office to the bamboo draw rail on the Holland Bay-road, trimmed or cut?—It is hard for me to state; I know that when the fence becomes a little shabby, it is cut down close, and allowed to grow up again. I can neither state the date nor the month last year when it was cut.

1150. How soon in that district, Duckenfield, does grass grow upon newly turned up land; or bush, or weeds?—That depends entirely upon the seasons. We generally plant it by the sucker, not by the seed. Weeds will grow in a week; they grow faster than anything else; that is during the rainy season.

1151. On what date did you go to Albion Estate in the month of October 1865?—I was away in the bushes from Thursday the 11th October till the following Saturday, and I went to Albion on Sunday the 14th, and I remained there till 28th.

1152. As a book-keeper on Duckenfield, do you personally know all the labourers on the estate?—Yes, I know all, except those who come from a distance; I know nearly every labourer in the Plantain Garden River District.

1153. Were Richard Walton, Tommy Miles, and John M'Call at any time employed on Duckenfield Estate, and did you know them, or either of them?—Yes, I knew the three of them; they get work at Duckenfield when they ask for it; the labourers do not work continuously on one estate, they try them all.

1154. Did you miss them during or after martial law; and if so, when first did you miss them?—I never missed any of them; I do not miss these people; there are always plenty of people to work on an estate.

1155. Have you seen these three men since martial law?—No.

[The Witness withdraws.

At 2·15 p.m. the Court adjourns till 10 a.m. on Monday, 5th instant.

Nineteenth Day, 5th November 1866.

On Monday, the 5th November 1866, at 10 a.m., the Court re-assembles, pursuant to Adjournment: Present, the same Members as on Saturday 3rd instant, and proceeds with the Examination in chief of—

Fourth Witness for Defence:

John Sinclair, Manager of Duckenfield Estate, and a Justice of the Peace, in the Parish of St. Thomas-in-the-East, who, being duly sworn, is questioned by the Prisoner.

J. Sinclair.
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1156. *By Prisoner.*] Do you know the grass piece near the post-office, with canes growing in it, just opposite the post-office?—I do.

1157. Do you know whether the bamboo draw rail in this grass piece is a common entrance for carts, wains, cattle and horses?—It is; it is the only entrance to that side of the grass piece.

1158. Being overseer of the estate, had you occasion and opportunity to ride into this field, and through this bamboo draw rail?—Of course I had, on several occasions.

1159. Did you do so in November last, 1865?—I did so; in the first week in November, between the first and sixth of the month, though the actual date I cannot swear to.

1160. In doing so, must you necessarily ride over or very near to a spot where there is now a hole or grave, out of which, by your leave, Colonel Daniell and Mr. Jackson had some bones dug in September last 1866?—Of course; I passed very close to that spot, where a grave has since been dug, though there was none there then; you could not avoid seeing its position. When I say there was none there then, I mean there was nothing at that period that I could recognise as a grave; there was a slight sinking in the earth, covered over with grass and broomweed; and this I took for an undulation of the earth, a place where the water would settle.

1161. If there had been any such signs, must you necessarily have seen them in November, when you rode by that spot and through the bamboo draw rail?—I could not possibly have avoided seeing the grave had it been there.

1162. Do you know Mr. Charles M'Dermott; if so, was he in your employment in November and December 1865, and was he employed as book-keeper in doing anything in this grass piece about this same place?—I know Mr. M'Dermott, and he was book-keeper under me in November and December 1865; he had to look after people who were employed scything down the grass in that piece.

1163. In which month of last year is it your belief that Charles M'Dermott was so employed in looking after people scything down that place?—The end of November or beginning of December 1865; this I give from memory.

1164. Do you know if that place called the "grass piece" was accustomed to be fed down by the estate's pasturage stock, as well as to be cut down?—Yes; they were fed down by the overseer's stock; the field is usually allowed for this purpose.

1165. Was it before or after you had in the first week in November 1865 ridden into that grass piece and come through the bamboo draw rail that M'Dermott was looking after the grass?—After the first week in November.

1166. Have you since been with Mr. Chisholm of Golden Grove, to the same spot, during this year 1866?—I have; as far as I can remember, about the end of March or beginning of April last.

1167. What appearance did this hole present in March last; was the place then fresh or old looking?—Very similar in appearance to what it was when I saw it in November 1865.

1168. As an overseer of a very large estate, and a justice of the peace, have you had opportunities of forming an opinion as to the credibility of the lower order, as witnesses, in respect of time, date, distance and numbers; as a general rule, is their testimony in such matters to be relied on?—They have such an imperfect idea of time, dates and distances that I do not consider their testimony can be relied on. I have found this the case as a justice of the peace; they are very inaccurate.

1169. If a number of persons, say eight or nine, with shovels or hoes or other implements, had been working about 8, 9, or 10 a.m., at a grave at this spot, by the bamboo rail, would there be any difficulty in persons, passing by the road near the bridge, hearing what was going on, near that bamboo rail?—I would say not; they generally make a noise when at work.

1170. If three bodies killed on a Saturday, about noon, were tied to an open fence and exposed to the air all the same afternoon, all the Saturday night, until about 8, 9, or 10 a.m. next day, would you, from the climate of St. Thomas'-in-the-East, be led to expect that the bodies would stink, and attract crows and passers by on the road about this bridge?—The bodies would certainly attract crows; it would depend materially on which way the wind was blowing at the time, whether it would attract passers by at the bridge. The bodies would stink; you would not perceive it unless you went close to the place; but this depends on whether the wind was blowing directly over the bodies to where you stood.

1171. Suppose the breeze was blowing from Holland Bay way towards the bridge or road where persons were passing?—Our prevailing wind there is an easterly one, and comes from Holland Bay way; and if it had been blowing at the time, persons at the bridge passing by would have smelt them.

1172. Is this drawing, the original plan in evidence, correct in describing the course of the logwood fence and its curve by the road as it is delineated; ought it or not to have been drawn with a greater curve?—My impression is, that it is not correct in the following particulars: First, I think that the road makes a greater curve towards the river, commencing at a point nearly opposite the abutment of the Iron Bridge, and ending just before you come to the bamboo draw rail. (*The Witness marks with a pencil what he thinks is about the curve of the road.*) Secondly, I think the spot marked "Grave" is misplaced; instead of its being directly opposite the bamboo draw rail,

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rail, it is rather to the left of that, on entering the field.

1173. Can a person standing at or in the shop see the bamboo draw rail, or see soldiers firing from the bamboos right opposite across the road, at that part directly opposite the bamboo rail?—A person cannot see the bamboo draw rail, standing at or in the shop at present, although the logwood fence is considerably lower than it was at the period at which it is represented these men were shot. I do not think a person could see the spot directly opposite the bamboo rail, directly across the road. I think the curve in the road and fence must be too great. I should say that standing at or in the shop, a person could not see soldiers firing, who were standing across the road opposite the bamboo draw rail.

1174. Is there anything between the cotton tree in the grass piece and the bamboo draw rail fence in the grass to hide the view, from the one to the other by a person standing near about the cotton tree inside the grass piece?—There is nothing except the bamboo fence which runs right across the grass piece. I cannot say whether that would intercept the view between the cotton tree and the bamboo draw rail, as I never observed it.

1175. About what distance is that cotton tree from the logwood fence, near by the bamboo draw rail?—I should say about 120 yards, that is, from the cotton tree to the bamboo draw rail where the grave is, but I never measured it.

1176. Were you a volunteer, and if so, what rank did you hold during martial law in St. Thomas'-in-the-East?—I was a volunteer, and held the rank, at that time, of quartermaster.

1177. As such, do you know if there were constant complaints of soldiers straggling, and of the difficulty of controlling them?—There were constant complaints; this refers to the black soldiers and to the Maroons, but more particularly to the black soldiers.

1178. Do you know if any Maroons were about Golden Grove under their Captain Mendes?—I do. There were Maroons in that district under Captain Mendes.

1179. Do you know George Manning; what is he; what is his character?—I do know Mr. Manning. He is a storekeeper, but I can say very little of his character.

1180. What do you mean when you say, you know or can say very little of his character?—I mean that I have not had sufficient dealings with him.

1181. Have you had opportunities of forming an opinion of the character and conduct of Ensign Cullen, during martial law, and while he was in St. Thomas-in-the-East; is he a humane man or otherwise?—I had a great many opportunities of forming an opinion as to his character. He is an excessively humane man, particularly to the prisoners, to those upon whom he had to inflict punishment.

1182. *By Prosecutor.*] Did you, when you rode into this grass piece during the first week in November last, dismount from your horse?—I dismounted in coming out to fasten the draw rail.

1183. Had you any object in making particular observation of any one spot more than another in that grass piece?—I had no object, but I could not have passed a newly-dug grave without seeing it.

1184. Did you measure the ground in any way or use any instrument of any description, to aid you in coming to the opinion which you have expressed as to the place which was exhibited to you in your examination in chief?—I measured it so far, that I paced the distance from Manning's shop to the bamboo draw rail, but I used no instrument.

1185. When informed that the plan now before the Court was prepared by an engineer, and that it has been drawn to a scale, will you still maintain your opinion against his measurements?—I would, otherwise I should not have expressed it.

1186. *By Court.*] When did you leave Duckenfield during martial law and when did you return?—I left on 12th October 1865, with my family, for Port Antonio, where I took refuge. I believe that was the date, as it was the day following the outbreak in Morant Bay. I returned to Golden Grove on 21st October, about 2 p. m., and to Duckenfield on 30th October, I think. On the 21st October I came from Morant Bay with the soldiers and volunteers under Captain Adcock, to Golden Grove, and Golden Grove was my head quarters between the 21st and 30th October.

1187. On what date last year was the logwood fence to the grass piece, from opposite the post-office to the bamboo draw rail, on the Holland Bay Road, trimmed or cut?—The end of November or beginning of December, shortly after martial law. I cannot be exact without reference to my books.

1188. Was the whole of the grass cut in the grass piece adjoining the Holland Bay-road, in the months of November or December last; including that part of the grass piece eastward of the bamboo fence which divides the field?—I think it was, both parts were cut, I believe. I am certain the westward part was. We generally cut them all down together.

1189. You say that you think a person standing at the shop could not see soldiers firing who were standing across the road opposite the bamboo draw rail; did you place a person opposite the bamboo draw rail and yourself stand at the shop to ascertain the fact, or is it merely an opinion on your part?—I placed no person there to try, as I was so convinced that you could not see soldiers firing where they are said to have stood. I myself stood at the shop to look. I know the lines perfectly well.

1190. Do you remember seeing the entrance to the grass piece shortly before the outbreak, and then observing any sinking of the ground?—I do remember, as I went there frequently; the ground was in the same state after the outbreak as it was prior to that occurrence. There was no difference, there was the same sink, and there are a good many more of the same sort in the field.

1191. Did you, when in company with Mr. Chisholm in March, observe any mounds like graves in the grass piece?—Yes. I saw several small mounds, besides the one pointed out to me which has since been opened.

1192. Have you ever had any of those mounds dug up?—I have not.

1193. You spoke of this spot, from which three bodies have been removed, in one of your answers, as a "sinking" of the ground, and, in another, you called it a "mound;" explain which you mean?—There is both a sink and a mound at the present time, and in March last, there was the same; I believe the bodies were taken from the "sink," as that is the part that was dug up; the mound still remains.

[The Witness withdraws.

Fifth Witness for Defence.

ROMEO WILLIAM DRYSDALE, Police Serjeant for St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

R. W. Drysdale. 5 November 1866.

1194. *By Prisoner.*] As a serjeant of police in St. Thomas-in-the-East, were you sent with any despatch from General Nelson at Morant Bay to Captain Hole at Manchioneal in October 1865?—I was.

1195. On what day in October 1865 were you sent, and on what day did you go with this despatch?—I was sent on Friday, the 20th October 1865, and I went on that day.

1196. Did you see Ensign Cullen and Dr. Morris at the post-office while you were upon that journey on your return from Captain Hole?—I did; on the morning of October 21st, at the post-office at the Iron Bridge.

1197. Where were Ensign Cullen and Dr. Morris when you saw them, that Saturday, 21st October 1865?—At the post-office; inside Mr. Manning's private quarters.

1198. Did you see Manning at the shop or post-office on this same Saturday when you saw Ensign Cullen and Dr. Morris at the shop or post office?—He (Manning) was in the shop.

1199. Did you, while you were at or about the post-office that Saturday, see any prisoners shot, or about to be shot, by the soldiers?—None were brought in there during the time I was there, nor up to the time I left.

1200. If any persons were being shot, or about to be shot by soldiers, at, or about, or near the post-office, or logwood fence, or Iron Bridge while you were there on that Saturday, must you have seen them?—I would, for I was about three-quarters of an hour there; I was there until they got tea for me.

1201. Did you hear any firing, as of soldiers shooting at or killing men, near or about the bridge or the logwood fence on that Saturday?—None whatever.

1202. Did you see any prisoners tied or being untied that day at or about there?—None whatever, during the time I was there, up to the time I left.

1203. When you left the post-office on that Saturday, on what road, and in what direction did you go?—I went in the direction of Golden Grove, and then on to Morant Bay.

1204. Did you meet, on your way, any prisoners in charge of any book-keeper or constables, or any one, that same Saturday; as a serjeant of police, would you not have spoken to them, and made inquiries, if you had seen them?—I met nobody; but if I had met prisoners I would have inquired.

1205. From the time you arrived at the post-office till the time you left it, did you see Ensign Cullen with any soldiers in charge of any persons, brought in that day as prisoners, or hear any orders or directions of any kind to flog or to shoot them?—None whatever.

1206. In going from the post-office to Morant Bay, do you pass by the road of Golden Grove, which is near the Golden Grove Chapel?—I had to pass right through Golden Grove, near the chapel, or church, as it is called.

1207. Is that near the works of the estate?—Yes, quite near the works of the estate.

1208. While you were at the post-office that Saturday, was any complaint ever made, or any information given to you that day about the shooting or killing of any persons or prisoners at all, that day?—None.

1209. Do you know Richard Walton, Tommy Miles *alias* Tom Bell, and John M'Call *alias* George M'Quarry M'Call; if so, did you see any of them brought in as prisoners whilst you were at the post-office that same Saturday?—I do not know any of those men; no prisoners were brought in while I was there.

1210. At what time on this same Saturday, 21st October 1865, did you reach the post-office; how long did you remain about there, and about what time did you leave?—I arrived there about 9 a.m.; I stopped there till I got tea; I left between 9 and 10 a.m. for Morant Bay the same morning.

1211. *By Prosecutor.*] Did you accompany the detachment of soldiers from Manchioneal to the Iron Bridge on Saturday 21st October 1865?—They left before me; as I was waiting for a letter for General Nelson I overtook them at Juan Hill; the soldiers, who were walking, I overtook; those who were riding had gone on before; the few who were walking were knocked up, and those were the ones I overtook.

1212. Did you leave Ensign Cullen and Dr. Morris, and the detachment of soldiers, at Mr. Manning's shop, or about the place, on 21st October 1865?—I found them there and I left them there.

1213. *By Court.*] How far is Juan Hill, where you overtook the soldiers walking, from the Iron Bridge?—I overtook them at the saddle of Juan Hill, running down to Amity Hall, and I should say it was about one mile and a quarter from the Iron Bridge.

1214. You said you overtook a few soldiers walking; how many were there?—I think about four or five, not more. I do not know any of them. They were all black soldiers.

1215. Did you observe where Ensign Cullen and Dr. Morris were when you left the post-office, and what they were doing?—They were inside Mr. Manning's private quarters when I left. I did not observe what they were doing.

[The Witness withdraws.

Sixth Witness for Defence.

ALFRED GEORGE BERRY, Civil Engineer, practising in this Island and in Hayti, being duly sworn, is questioned by the Prisoner.

A. G. Berry.

1216. *By Prisoner.*] DID you leave the Island, and have you only very recently returned from Hayti?—Yes; I returned on 15th of last month, having left the Island in February last.

1217. Were you a volunteer during martial law; if so, were you at Golden Grove in October 1865?—Yes; I was one of the Kingston volunteer troop of cavalry, under Captain Astwood.

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wood. I was at Golden Grove in October, 1865.

1218. Did you receive any orders from Captain Adcock or Captain Astwood at Golden Grove, and did you obey the orders?—Yes; I received orders from Captain Astwood. I obeyed the orders.

1219. What time and day did you leave Golden Grove quarters to obey the order?—I left on Saturday, 21st October 1865, at 1 p.m., or about that time.

1220. Where did you go, and who went with you?—I went on to the post-office at Golden Grove, near the Suspension Bridge. Mortimer Brandon went with me. We were the advanced guard.

1221. Is Mr. Mortimer Brandon now in this Island?—No, he is not.

1222. Did you or not keep a look-out on either side of the road, and do so by command?—I did so on Sunday, 22nd, but I do not remember doing so on Saturday, as we went on very quick.

1223. Did you go up to the post-office or shop at once?—Yes, I did so.

1224. To whom were the orders to be delivered at the post-office?—To Ensign Cullen.

1225. Did you see Manning and others at the same time in the shop on that day when you went there?—Yes; but I did not know at the time his name was Manning, but he told me he was the proprietor of the place. I also saw a lot of black soldiers there.

1226. Did Mr. Brandon go into the building to deliver that order, or did you?—Brandon did.

1227. Did Mr. Brandon return immediately, and did you then see Ensign Cullen in the shop?—Brandon returned in about ten minutes to me, I being then in the road. I did not see him (Ensign Cullen) in the shop, but I did see him outside, about five minutes afterwards.

1228. From the time you arrived at the shop till the time you left it, did you see or hear the soldiers about there shoot any persons, to your knowledge, on that day?—No.

1229. Was any complaint made, or information given that day to you at all about three men who had been shot, or were going to be shot, on that day?—No: there was no information whatever given me about three men having been shot, or going to be shot.

1230. About what time did you leave the shop to return to Golden Grove, this same Saturday, October 21, 1865?—I left about 2.30 p.m., or thereabouts.

1231. As a fact, were you in conversation with Manning at the post-office, while you were there that day?—Yes.

1232. Did you return with or without Ensign Cullen and his detachment, on that day, to Golden Grove?—I returned with them.

1233. Do you know the field in which canes are growing, opposite, on the other side of the road from Manning's shop, by a logwood fence?—Yes, I do.

1234. Did you walk about that same field that same day while you were in it?—Yes, I went into the field, through the fence.

1235. Did you, on that day, while you were in the field opposite Manning's shop, see any dead bodies tied to any bamboo draw rail or fence in that field?—No, I did not.

1236. Did you go with the detachment of Captain Astwood on the Sunday after Saturday, 21st October, by the Iron Bridge, and did you then see or hear of any persons lying shot, or dead?—I was on the advance guard that day. I saw nothing and heard nothing of people being shot.

1237. Did you see or hear any gang of eight or nine persons, with hoes and shovels, on your route that same Sunday, near the Iron Bridge, or along the road?—No.

1238. *By Prosecutor.*] Which field did you go into and through which fence did you go into the field immediately opposite Manning's shop, on 21st October, 1865?—It was a cane field I went into, and I think, as far as I recollect, with a logwood fence. What took me in there was, seeing something black on the canes that covered the roots all over. This turned out to be small black insects. The canes were about three feet in height.

1239. Where did the detachment of Captain Astwood go from and to, on Sunday, 22nd October, 1865, and at what hour of the day did it move?—We left Golden Grove about 6 or 6.30 a.m. We went on, crossed the Iron Bridge by the post-office, and on to Amity Hall. We crossed the Iron Bridge about 7 a.m. After leaving Amity Hall we went up the river district, and so home to Golden Grove, our head-quarters at that time.

It being now 4 p.m., the Court adjourns till 10 a.m. 6th inst.

Twentieth Day, 6th November 1866.

On Tuesday, the 6th November 1866, at 10 a.m., the Court re-assembles, pursuant to Adjournment: Present, the same Members as yesterday, and proceeds with the Cross-examination of Alfred G. Berry.

A. G. Berry.

1240. *By Prosecutor.*] You have said you went up the river district, and so home to Golden Grove; did you return and cross the bridge again, or did you go by another route, say through the estates, and which of them?—We went to Amity Hall. The advance guard, Mr. Brandon, and myself, with Mr. Harrison, went to Hordley Estate, the main body going to Wheelerfield. We met the main body at Wheelerfield; from there to Plantain Garden River Estate, then through a small village the name of which I do not know, then on to Golden Grove, our head-quarters. We did not cross the bridge again the same day, but returned by another route.

1241. *By Prisoner.*] You say you were on the advance guard; about what distance did you keep ahead of the main body on the Sunday?—One hundred yards.

1242. You say the insects on the canes attracted your notice; had you previously been employed

employed or living on a sugar estate?—I have never been living on a sugar estate, but as an engineer I have been employed about them.

1243. *By Court.*] Was the cane piece which you entered on Saturday, 21st October 1865, immediately opposite the Post-office at the Iron Bridge?—It is opposite, but where I entered it was not opposite. It was a few feet off. It was on the Golden Grove side of the Post-office, that is to the westward.

1244. How far did you go into the cane piece?—I did not enter the canes. I went up to them, crossing the interval between the fence and the canes, some grass or something. I have not the slightest idea of the breadth of this interval which I crossed before getting to the canes.

1245. You say you were attracted by something black in the appearance of the canes; did you see that appearance from the road?—Yes, I did.

1246. Were you mounted or dismounted when you saw this blackness?—I saw it when mounted, as I was going to the shop.

1247. Did you see the black look of the canes by looking over or through the logwood fence?—I was on a horse, and saw it over the fence. *A. G. Berry.* 6 Nov. 1866.

1248. When in the field opposite Manning's shop, did you notice a bamboo rail?—I do not remember anything about a bamboo rail; I only went in to look at the canes and out again.

1249. Did you go beyond the Post-office, in the direction of the Iron Bridge and Holland Bay, that is eastward, whilst you were waiting there on the 21st October 1865?—No.

1250. Were there other persons besides the soldiers in the vicinity of the Post-office at the time you were there on Saturday 21st October 1865; if so, about how many?—When I was there, I did not take any notice at all of anyone being there, except the black soldiers.

1251. Did Mr. Mortimer Brandon return to this Island by the packet which came in yesterday, 5th inst.; if not, do you know when he is expected to return?—He did not return in yesterday's packet, and I was told he would not be here till January next.

[The Witness withdraws.

Seventh Witness for Defence.

Richard Moyle Wilson, Book-keeper, on Plantain Garden River Estate, being duly sworn, is questioned by the Prisoner.

1252. *By Prisoner.*] Were you a book-keeper at Duckenfield in 1865 and 1866?—I was. *R. M. Wilson.*

1253. Do you know the Duckenfield grass piece bamboo draw rail, opening on the road which goes past the Iron Bridge in the direction of Holland Bay?—Yes, I do.

1254. Had you, as book-keeper at Duckenfield, occasion to go into that grass piece, near about this bamboo draw rail, during martial law, or since?—I have been frequently into it since martial law, but not during martial law.

1255. Did you see any recent signs of a grave in this Duckenfield grass piece, near about the bamboo draw rail, at any such time?—No; never.

1256. If there had been any such marks or signs of a recent grave near about this bamboo draw rail, must you have seen them?—Certainly.

1257. *By Prosecutor.*] How long after martial law was it, that you first went into this grass piece?—About a month after, in December.

[The Witness withdraws.

Eighth Witness for Defence.

Joseph Wood, Book-keeper at Amity Hall Estate, being duly sworn, is questioned by the Prisoner.

1258. *By Prisoner.*] Were you a book-keeper in 1865, and also this year?—I was a book-keeper at Hordley in 1865, and part of this year. *J. Wood.*

1259. Were you in the discharge of your duties obliged, during or since martial law, or this year, to go often over the Iron Bridge to Holland Bay; and if so, for what purposes?—Yes; I have often passed and re-passed from Hordley to Holland Bay, to look after produce, both last year and this year; I went since martial law, but not during martial law.

1260. Do you know the bamboo draw rail on the road, as you turn to the left hand in coming over the Iron Bridge from Amity Hall, and going in the direction towards Holland Bay?—I do.

1261. Have you had opportunities of seeing any fresh grave, inside that bamboo draw rail?—If there was one, I would have seen it.

1262. Did you see any such fresh marks in this grass piece by the bamboo draw rail, last year or this year, and before September in this year?—No, not till this year; since they have taken out the bodies.

1263. Do you know George Manning; what is he; what character does he bear?—I do know him; he keeps the Post-office at the Iron Bridge; he bears none of the best of characters to my knowledge.

1264. *By Prosecutor.*] Did you ever go into the grass piece?—Yes; since they dug up the bodies.

1265. Did you ever go into it before the bodies were dug up?—No.

1266. Then your observation is confined to your rides past the place in the course of your duty; that is, before the bodies were dug up?—Riding past, I look at the grass; I notice the grass.

1267. *By Prisoner.*] Is the spot (at which the hole is dug, out of which the bones were taken) near to, or far from that bamboo draw rail; could you or not plainly see six or seven yards inside from the road?—The spot is near to the bamboo draw rail; I could plainly see six or seven yards inside from the road.

1268. *By Court.*] When did you first pass the bamboo draw rail after martial law; were you on foot or mounted; and what made you notice the grass?—I do not exactly remember the date, but I think it was in December; I was mounted at the

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the time; I noticed the grass, because it was good grass to feed stock on.

1269. What was the height of the grass?—In some parts, far in, it is high, and other parts low. In a grass piece, in cutting it at the commencement, if it is a large piece, you will find the first part about two feet high when you had finished the last part of it. Far in, where the grass is high, I should say it would be from two to three feet, and in parts where it is low, it would be perhaps a foot in height.

[The Witness withdraws.

Ninth Witness for Defence.

JAMES AUSTIN FOWLES, Acting Surveyor of Her Majesty's Customs, residing in Kingston, being duly sworn, is questioned by the Prisoner.

J. A. Fowles.

1270. *By Prisoner.*] WERE you in St. Thomas-in-the-East during martial law; if so, what were you doing there, and what rank did you hold?—I was in St. Thomas-in-the-East from 19th till the 24th October 1865, as a volunteer; a private.

1271. Will you tell the Court whether you went with the detachment from Golden Grove over the Iron Bridge on Sunday the 22nd October 1865; whether on that route you saw or heard of the dead bodies of three men killed by soldiers, or saw or heard of eight or nine persons with hoes or shovels, or other implements, digging a grave, or met any such people at all that day?—I went with the detachment from Golden Grove over the Iron Bridge on that date; I never heard on that march a word about three dead bodies; I never saw or heard of persons digging a grave; the only persons I saw were some three or four standing at the Post-office.

1272. On that route on this Sunday, was any person pointed out to you as being George Manning of the Post-office?—Yes; he was standing at the door.

1273. On your route on that Sunday, when you saw George Manning, was any complaint made, or information given to you, or to anyone in your troop, to your knowledge, about any three persons lying dead there by the grass piece, as killed by soldiers on the day before?—No information on this subject was given to me, nor in my hearing was any such given to anyone in my troop.

1274. Had those three or four persons, standing at the Post-office, any digging implements with them, such as hoes or shovels, or pickaxes or crowbars in their hands, or otherwise, that you saw?—No, they had no such implements in their hands; I saw no digging implements.

1275. Have you had opportunities of forming an opinion of the character and conduct of Ensign Cullen during martial law, and while he was in St. Thomas-in-the-East; is he a humane man, or otherwise?—I was with Mr. Cullen for four days. I saw him every day. I formed the opinion of him that he was mild, gentlemanly, and quite incapable of committing a cruel act. Numerous sentences of flogging were carried out, and I never saw him attend. On the morning before I left Golden Grove I was talking to him, when a serjeant of his company told him he had taken up three or four of his men for robbing an old woman in the neighbourhood. The men were brought up before him; he rebuked them, and told them that if a similar thing happened again, he would have them tried by court martial. He ordered the serjeant to restore the old woman her money, which was done. I consider him a very humane man.

1276. *By Prosecutor.*] At what hour did the detachment of volunteers, of which you have spoken, arrive at the Iron Bridge, or the Post-office?—I think between 7 and 8 a.m.

1277. Did the detachment remain at the Post-office any time, and in what direction did it go; did it return the same way?—It remained at the Post-office about 20 minutes. It crossed the Iron Bridge, but did not return by the same route.

1278. *By Prisoner.*] You state that you arrived at the Iron Bridge between 7 and 8 a.m.; did you all or not wait for, and get coffee, &c., at Golden Grove before you started on the Sunday morning?—I know I got no coffee before I started, because I was very much annoyed at it. I do not know whether others got any, or not.

1279. *By Court.*] Did the men of the detachment dismount, or break off at the Post-office or Iron Bridge?—Some of them dismounted.

1280. Do you remember what sort of morning it was; whether wet, fine, calm, or a breeze blowing; cold or hot?—To the best of my recollection, it was very warm. I do not believe there was any rain that morning. I cannot now remember whether or not it was calm, or a breeze blowing.

1281. To your knowledge, were any black soldiers that Sunday morning at the Post-office, or on the road from Golden Grove to Amity Hall?—No, I did not see any.

[The Witness withdraws.

Tenth Witness for Defence.

WILLIAM GEORGE ASTWOOD, a Merchant residing in Kingston, being duly sworn, is questioned by the Prisoner.

W. G. Astwood.

1282. *By Prisoner.*] WERE you in St. Thomas-in-the-East during martial law; whereabouts were you, and what rank did you fill; are you a justice of the peace?—I went to St. Thomas-in-the-East on 19th October 1865, a few days after the proclamation of martial law. I was at Morant Bay, and afterwards in the Plantain Garden River District. I went up in command of the Kingston troop of Volunteer Cavalry, as its captain. I am a justice of the peace.

1283. On Sunday 22nd October 1865, did you go with a detachment from Golden Grove; and, if so, did you on that route see three dead bodies, or see or meet any persons with hoes, shovels, or other implements of digging, about the road or grass piece, or Post-office, or Iron Bridge?—I went

went on that date with a detachment from Golden Grove. I saw no dead bodies, nor did I hear of anything of the sort. I saw nothing of any persons with digging implements; and I would specially mention that, after crossing the Iron Bridge, and approaching the scene of the murder of Mr. Hire, we scoured the country most minutely, searching every place and house, and saw nothing of the sort; in fact, saw very few people indeed.

1284. How many men had you on that route, that Sunday morning?—Officers and men, about 40; as near as possible, 40.

1285. Was a person, said to be George Manning, pointed out to you on your route that Sunday morning, at or near the Post-office?—There was a person standing at the door of the Post-office building, who was pointed out to me as George Manning.

1286. On that route, and when you saw the person pointed out as George Manning, did you receive, or did your men to your knowledge receive, any complaint or information that three men were then lying dead near the grass piece, shot by soldiers the day before?—I received no information myself; and, to the best of my knowledge, my men received none; not in my hearing.

1287. About Golden Grove, and that road, and about that time, who were chiefly to be seen; males or females, or anyone?—We saw very few on the road. Those to be found in the houses were chiefly men with sore legs, and so on, and women with children; those, in fact, who seemed to be unable to take to the hills.

1288. How long were you on the road searching, between the time when you left the Iron Bridge and the time you left Amity Hall?—I think the time occupied in searching the negro houses at the foot of Juan Hill, and afterwards the Great House at Amity Hall, must have occupied all of two hours, making it, I should think, about 10 a.m. when we left Amity Hall.

1289. Do you know, as a fact, that Mr. Berry and Mr. Brandon were the men sent on 21st October, and as an advanced guard on 22nd October, on Sunday?—I ordered them myself to go on Saturday 21st to the Iron Bridge, with a message to the officer commanding the detachment of the 1st West India Regiment, and I saw them go. When we commenced our march on Sunday, I placed them as an advance guard.

1290. Did you leave Mr. Berry and Mr. Brandon without any instructions, being your advance guard, or did you give them positive orders as to their conduct on the route?—I did not leave them without instructions. I directed them to stop every person they met, and to look carefully into the cane pieces and hedges on either side of the road, and to halt and observe carefully anything that required being reported to me. My orders were to that effect; I am not, of course, giving the exact words used.

1291. To the best of your recollection, did Mr. Berry and Mr. Brandon, who were sent forward on 21st October 1865, come back to Golden Grove quarters about the same time as Ensign Cullen with his detachment, on Saturday 21st October 1865?—I have reason to believe they did. They reported their arrival to me the same time that Ensign Cullen came in.

1292. Did you see Ensign Cullen on his arrival at Golden Grove on Saturday 21st October 1865, and, if so, at what time did he arrive there?—I saw his arrival; I did not consult my watch, but I think about 3 p.m.

W. G. Astwood.

6 Nov. 1866.

1293. Did Ensign Cullen, when he came into Golden Grove, seem at all excited or alarmed, or in fear of anything?—He did not; and appeared quite collected. I noticed no change in his manner. He appeared then as he has ever since.

1294. Did Ensign Cullen on that day, or not, freely enter into conversation with you about his march that day from Manchioneal to Golden Grove; answer as to the fact, whether he did or not?—He did.

1295. On that Saturday 21st October 1865, was any information given to you by Ensign Cullen as to the killing or shooting of any three men, about the grass piece, or near the Iron Bridge, or near the Post-office, or any road in that district?—Ensign Cullen and I sat next one another at dinner, and the conversation at dinner turned almost exclusively on the incidents of his march from Manchioneal, and of mine from Morant Bay. He appeared free and unreserved, and there was nothing of the sort mentioned.

1296. Is there a clock at the Golden Grove Church, near the Golden Grove Quarters; and does that clock strike the hours?—I think there is, and I think it does strike the hours.

1297. During martial law, was there any service held at any place of worship, to your knowledge, in the district about Golden Grove while you were about there?—There was not; I particularly remember two chapels, one at Amity Hall and one a little further on, being closed.

1298. Did you meet or overtake on your route on that Sunday morning, about the Post-office, or Iron Bridge, or the road between the bridge and Amity Hall, any black soldiers?—I did not; neither met nor overtook any.

1299. As captain of a troop, did you hear of frequent complaints of the straggling of soldiers on the march and otherwise, and of the difficulty of keeping the men under control?—I have, and have on several occasions met them straggling.

1300. Were there any parsons (clergymen) still remaining in the district, or had they all fled for their lives?—I believe all the recognised parsons had fled; but there were some of the local preachers amongst the peasantry remaining, self-constituted preachers, as I am not aware of their being ordained by any proper authority.

1301. Are you aware whether or not bodies of troops, black soldiers, volunteers, Maroons, and others, were about this neighbourhood during the time you were about the district?—The Maroons were in the neighbourhood while we were there. Troops had been there, and I think troops and volunteers were about subsequent to our leaving. On reflection, I can state positively that troops and volunteers were there after we left. The Maroons remained about there after we left.

1302. On the Saturday, 21st October, was there then any fear whatever of any commission or court martial appointed from England?—Not the slightest; every man felt he was doing his duty.

1303. When first did you hear of this report, about the killing of these men; did you, in consequence (as a fact), make inquiries of your men?—I heard of it a few days before the closing of the Royal Commission. I did make inquiries among my men; so surprised was I at the story, that I went about and did make inquiries among my men.

1304. Suppose bodies were lying dead, ex-

W. G. Astwood. 6 Nov. 1866.

posed, killed on a Saturday, out in the night all Saturday, uncovered and open to the atmosphere till 8, 9, 10, 11, a.m., on the Sunday, would you have expected in that climate, in St. Thomas-in-the-East, that the bodies would have stunk, or that they would have attracted crows?—I speak from experience about the crows; I think any dead body lying out that length of time would have attracted a large assemblage of crows; I believe they would have become offensive to the sense of smell.

1305. Did you see any crows about that Sunday morning, about this grass piece?—I saw none.

1306. Do you remember passing by this grass piece by the logwood fence and anything occurring, such as a member of the troop looking for a horse in that grass piece, or such as some of your men halting and talking to anyone?—I remember Mr. Harrison, who was one of my men, offered me a horse, and expected to find it in the grass piece opposite the Post-office; he afterwards told me he looked and could not find it. I remember two of the men of the party dismounting and going into the Post-office and speaking to Mr. Manning; one of them got from him a piece of rope.

1307. Have you had opportunities of forming an opinion of the character and conduct of Ensign Cullen during martial law, and in St. Thomas-in-the-East; is he a humane man, or otherwise?—I saw a good deal of Ensign Cullen whilst in St. Thomas-in-the-East, and observed him to be very gentlemanly and unassuming. I had no opportunity of judging of his humanity, nothing having transpired by which I could form an opinion. Now I remember, he sat with me on a court martial, and showed no disposition whatever to punish people beyond what might be considered conscientiously correct, rather inclined to leniency. From his general deportment, I should think he had all the elements of humanity; my subsequent intercourse with him confirms that opinion.

1308. *By Prosecutor.*] You have spoken of searching the negro village at Juan Hill, and the Great House at Amity Hall; did you search all the labourers' cottages on Amity Hall Estate?—I did not search all personally, but I know that they were all, or nearly all, searched, because the party spread out for that purpose; there may have been some exceptions.

1309. Then do you mean this Court to understand that on all that estate there were no persons to be found on that day able, as you have said, to work; that they were all gone to the hills?—The majority of the houses were unoccupied; those that were occupied were so by the class of people whom I have mentioned. As a rule, all the able-bodied men and women had disappeared; they were hiding, I suppose; we could not see them.

1310. How, then, was the work of the estate being carried on?—It was not being carried on at all. A section of our party of volunteers was composed of overseers and book-keepers who had fled from that district, and had been as refugees in Kingston and Morant Bay. All work, therefore, was suspended, and the majority of the houses occupied by these people were uninhabitable.

1311. Then who was taking care of the cattle on the estate?—In most instances they were wandering about. I do not mean this to apply to Amity Hall Estate, as I did not notice the cattle there, but to the estates generally.

1312. *By Court.*] How many Sundays were you in the district of Golden Grove; be so good as to specify the dates?—I was in that district only one Sunday, the 22nd October.

1313. What description of soldiers did you meet straggling; will you state the dates and places at which you met them?—They were black Zouaves belonging, I suppose, to one of the West India regiments. Early on the morning of the 21st October, Saturday, I met one at East Prospect Estate, between Morant Bay and Port Morant; I met another, it may have been the same man, at Leith Hall, at Port Morant. Then, very early on the morning of 23rd, I met two riding from Dalnay; I called to them to halt, and they refused to do so. I was riding through the Duckenfield Estate on the high road at the time.

1314. Can you state the places in the neighbourhood where the Maroons and other troops were on Saturday 21st, or Sunday 22nd October, 1865?—Of my own knowledge I cannot state where the Maroons were on the 21st, but I met a party of them on Sunday the 22nd at Batchelor's Hall Penn, and on the 21st a party of the 1st West India Regiment, under Ensign Cullen, were at Golden Grove with ourselves, the volunteers. Ensign Cullen's party was also there on 22nd.

1315. Were any of Ensign Cullen's detachment mounted when they arrived at Golden Grove on Saturday afternoon, 21st October?—There were; I cannot say how many, but they showed a good lot of horses in the paddock after they had dismounted.

[The Witness withdraws.

It being now 4 p.m., the Court adjourned till 10 a.m. to-morrow, 7th instant.

Twenty-first Day, 7th November 1866.

On Wednesday, the 7th November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present the same Members as yesterday.

Eleventh Witness for Defence.

Robert Scott Brass, Merchant of Kingston, being duly sworn, is questioned by the Prisoner.

R. S. Brass.

1316. *By Prisoner.*] Were you in St. Thomas-in-the-East during martial law; and if so, what rank did you hold?—I am first lieutenant of the Kingston Volunteer Company of Engineers, but during the rebellion I volunteered to act, and did act, as lieutenant in Captain Astwood's mounted troop, in Captain Adcock's column; I was in St. Thomas-in-the-East during martial law.

1317. Did

1317. Did you go with Captain Astwood's troop on Sunday 22nd October 1865, from Golden Grove?—I did.

1318. Did you see any of the men of the troop halt, stop, and apparently speak to any one by the Post-office?—I did not, I was in advance; had I seen it, I would not have allowed it.

1319. Do you know the Iron Bridge; when you came there did you at first take the road over the bridge, or along the same road, towards Holland Bay?—I know the Iron Bridge, I did not at first go across it, but kept the straight road, leading towards Holland Bay.

1320. If you did, about how many yards in the direction of that Holland Bay-road did you go, and were you then mounted?—I should say I went as far as 25 or 30 yards down the road, I was mounted at the time.

1321. Were you called back by any one, and informed you had taken the wrong road?—I was.

1322. Did you see bodies of three dead men that morning, along the distance you went, from the Iron Bridge on that Holland Bay-road, or in front of you at all, further on, as far as you could see forward on that road, or on that road at all that same Sunday?—I saw no dead bodies that morning at all.

1323. Was any complaint or information received by you, or by any of your troop, to your knowledge that morning, about three men lying dead, unburied near the logwood fence, or by the grass piece, as persons who had been killed by soldiers the day before?—I received no information whatever of such an occurrence, nor did any of my men, to my knowledge.

1324. Did you see any persons with hoes or shovels, or other digging implements on that Sunday on your route, on the road which passes the Iron Bridge, or anywhere near that road?—I did not; had I seen such, I should have made them prisoners.

1325. Did you see any of the Maroons on Sunday 22nd October 1865, in this same plantain Garden River district; if so, had they any prisoners or not in charge?—I saw Maroons one day, I cannot say on what day, it might have been on Sunday; they had prisoners in charge.

1326. Is it a fact or not that strict orders were given to look out well on either side that same Sunday morning, on your route; and if so, did you obey such orders?—I received such orders from my superior officer to that effect, before leaving Golden Grove, and I kept repeating them to my men.

1327. Can you tell the Court whether you were the only trooper who made the mistake, of going on by the Holland Bay-road, instead of going direct over the Iron Bridge on the route that Sunday morning?—No; there was one or two files before me, I was placed by the second file on the left, that was my exact position; there were two troopers a few paces further on in advance, who throughout had acted as advance guard, but I cannot recollect whether these two troopers in advance made this same mistake. *R. S. Brass.* 7 Nov. 1866.

1328. *By Court.*] From what point do you count the 25 or 30 yards, which distance you say you went down the Holland Bay-road when you were called back?—From about opposite the Iron Bridge. (*Witness points to the place in the plan marked E.*)

1329. What bounded the Holland Bay-road on either side, as far as you went or could see?—I recollect a logwood fence running along the right hand side of the road coming from Golden Grove, but I could not say how far it went on the other side, bamboos close to the river, that is, after passing the Post Office.

1330. What were the names of the troopers who formed the advance guard?—I cannot recollect them, there were two, on most occasions; Troopers Berry and Brandon were in advance, but on this particular occasion I cannot recollect whether they were, I was on the left of the second file from the front of the main body.

1331. Who called you back?—I cannot recollect; when I turned back I joined Mr. Harrison of Hordley, but I cannot recollect whether he called me; he was our guide.

1332. Are we to understand you then, that the head of column advanced with you along the Holland Bay-road until recalled; was the column compact?—The column was not compact, some had evidently been stopped before they got so far, but there were two or three files with me.

1333. Where did you see the Maroons, whom you say had prisoners in charge; what was the strength of the party of the Maroons; how many prisoners had they; which way were they going?—At a place called the Racecourse, in view of a house which I was told was called Batchelor's Hall, I had never been in that district before, and do not know much regarding the names of places; I cannot say what was the strength of the Maroons, but they were under one Captain Mendes; I cannot say how many prisoners they had, they were men and women banded together, we flogged some of them at the Racecourse; I do not know where the Maroons were going.

[The Witness withdraws.

Twelfth Witness for Defence.

JOHN HENRY DAVIS, Clerk to Messrs. Charles Levy & Co., Kingston, being duly sworn, is questioned by the Prisoner.

1334. *By Prisoner.*] WERE you in St. Thomas-in-the-East during martial law, and what rank did you hold?—I was, and I was a trooper in Captain Astwood's Volunteers. *J. H. Davis.*

1335. As you came along the road from Golden Grove towards the Iron Bridge, were you stationed on the right or left hand, on Sunday 22nd October 1865?—To the best of my recollection, I think I was on the right.

1336. Did you, in obedience to orders, keep a good look out that morning?—Yes.

1337. Did you see any bodies of three dead men from the Iron Bridge, towards Holland Bay-road to your right hand, as you turned over the bridge, as far as you could see forward on that road, that Sunday 22nd October 1865?—No, I did not.

1338. Was any complaint or information that Sunday received by you or any of the troop to your knowledge, about three men lying dead near the logwood fence unburied, persons said to have been killed by soldiers the day before?—No, I never heard anything of the kind.

[The Witness withdraws.

Thirteenth Witness for Defence.

EDWARD WHITEHOUSE LEWIS, being recalled, is questioned, on his former oath, by Prisoner.

E. W. Lewis. 7 Nov. 1866.

1339. *By Prisoner.*] WERE you employed by the Royal Commissioners to assist them in making inquiry into all matters connected with the late rebellion in St. Thomas-in-the-East; state the period?—On 13th February 1866, I was retained by the Royal Commissioners to proceed to St. Thomas-in-the-East, I arrived at Morant Bay on the morning of the 14th, I remained until the 22nd, examining over 100 witnesses, of which number I could only forward twenty to Spanish Town, as being material to the enquiry. On the evening 22nd, Mr. Russell Gurney, one of the Commissioners, arrived at Morant Bay, and a Court was held there that evening. We proceeded that night to Bath, and Courts were held there 23rd and 24th of the month. On Sunday I was directed to proceed to Manchioneal, to prepare a Court for Tuesday 27th. On that day Mr. Gurney held his Court there till it was dark. That completed my first mission to St. Thomas-in-the-East.

1340. Can you shortly state to the Court what means you took so as to obtain all the information from every one about these matters, and to make your mission publicly known?—Large placards or handbills printed by authority of the Royal Commissioners, and signed by their secretary, of which this was one (*exhibiting one in his hand*) were posted up in every direction throughout the parish of St. Thomas-in-the-East, and in the negro villages. Summonses were freely issued to all witnesses whose names were suggested to me. Rural constables and policemen were sent on the estates, negro villages, to tell the labouring people that I was there to hear their grievances, or to receive any information they could give. To facilitate this, and to save them from having any considerable distance to travel, I myself moved about from place to place in the district, as well as to other places.

1341. Was that first mission the only one; state how long you continued making inquiries for the Commissioners?—I made a second mission, beginning on 13th March. After the 27th February my services ceased, and I received a second retainer on the 13th March following; and that second mission arose from the circumstance that it was reported to the Commissioners that over 100 persons had, as it was alleged, disappeared from Monklands, in St. Thomas-in-the-East, whose disappearance had not been accounted for; accordingly, on the 14th March, a fresh Court was held before Mr. John Blossett Maule, another of the Commissioners, at Monklands. This second mission terminated on the 19th March, at Morant Bay.

1342. Did you see Anderson, and when first; did he give you any information about the killing of the three men, the subject of this prosecution?—

Before this question could be replied to, the Deputy Judge Advocate requests the President to be good enough to allow the Court to be cleared, in order that the latter part of this question may be taken into consideration.

The Court is accordingly cleared.

The Court is re-opened and the question put.

I saw him at Golden Grove on 17th March 1866, and on that subject I received no information from him.

1343. Did you see Manning, and when first; will you give the Court shortly your version of all that passed between you and him, in reference to the killing of the three men, the subject of this prosecution?—On Monday, 19th March 1866, a Court was held at Morant Bay before Mr. Maule for a few hours; I saw Mr. Manning, and asked him why he did not attend at Golden Grove on 17th instant? He said he had received his summons too late, that was the reason; I then asked him if he knew what had become of three persons named Bell, Walton, and M'Call? He said that he remembered during the second week of martial law, these three persons just named were brought in by constables to the Plantain Garden River Post-office, handed over to some soldiers who were there, black soldiers; they were taken some short distance from the Post-office and shot. I said, "We have had a great deal of hearsay evidence, Mr. Manning, did you see this done with your own eyes?" He said "No, I was in the Post-office, I heard the report of the guns, and from that I presume they were shot, as I subsequently saw the grave." I said, "Your evidence is not very material, as you did not see this yourself, but as you have been summoned, at the particular request of Mr. Morgan and Mr. Payne, you had better attend Mr. Maule upstairs."

1344. Did Manning mention at all to you the name of Ensign Cullen, as being concerned in the killing of these three men, on the day of which you speak?—He said no more to me but what I have just related to this Court.

1345. Was the charge about these three persons (the subject of this prosecution) made at an early part of the Royal inquiry, or only just at the final close, or just after a recent failure of a certain large number of cases at Monklands, in respect of soldiers?—We heard nothing of the charge of these three persons; that is, they did not appear on my list to be accounted for, till the 19th March; this was after the cases at Monklands had been enquired into, on 14th and 15th March.

1346. As a practising solicitor of some years standing, and as the solicitor in St. Thomas-in-the-East to the Royal Commissioners on their inquiry, will you tell the Court of your experience, as to the credibility of the lower orders, as to dates, times and distances; as a general rule, is their evidence in such respects trustworthy?—In my experience of nearly 20 years in connection with the law, very little, if any, reliance can be placed on the labouring population of this country, as to dates, time and distances; and this opinion has been further strengthened after my examination of from 300 to 400 persons in St. Thomas-in-the-East, none being able in that inquiry to give me further information as to date, than that a thing happened in the first, second, third, or fourth week

of

of martial law; of course there are some exceptions, in cases where they have had the benefit of some education.

1347. *By Prosecutor.*] Do not you know as a fact that Anderson gave evidence respecting the killing of these three men before the Royal Commissioners?—I do not know of my own knowledge what evidence he gave to them beyond what I saw printed.

1348. Did you make any written memorandum of what passed between you and Manning, or are you trusting to memory for what you repeat of the conversation you have spoken of as having taken place between you?—I am trusting to memory.

1349. Was Manning the first person who gave evidence or information about the death of these three men, which led to the inquiry instituted by the Royal Commissioners?—He was to me.

1350. But was he the first to any other person connected with, or to the Royal Commissioners?—I can only answer for myself.

1351. Do not you know as a fact that the inquiry touching the death of these three men did not originate in consequence of any information given by Manning, but by some other person?—I do not know how it arose beyond making myself inquiry of Manning as to these men. A list of persons who had disappeared was handed in to me. Amongst them were the names of these three men. Manning was the first man I asked about these men.

1352. When was that list handed to you?—On the 13th March 1866.

1353. Is the Court then to understand that Manning did not appear voluntarily, but in obedience to summons which was sent to him in consequence of your having that list sent to you?—He did not attend voluntarily; he was twice summoned, once to appear at Golden Grove, and once at Morant Bay. He did not appear the first time, but he did afterwards at Morant Bay.

1354. By whom was that list handed to you?—It was forwarded to me through the secretary to the Royal Commission, Charles S. Roundell.

1355. Do you not know that the Royal Commissioners refused to take more evidence than was barely sufficient to give them general information?—I know that their inquiry was as full as it was possible to be, and according to the information afforded them. I know of no refusal of evidence, if properly tendered and offered to them. I may add to this, that so particular was Mr. Gurney, one of the Commissioners, both at Morant Bay and at Bath, that he received evidence which I had rejected previously.

1356. Do you happen to know if any witness had been examined before the Commission on the subject of the death of these three men, previously to your getting the list of which you have spoken?—No; I have no knowledge on this point.

1357. *By Prisoner.*] You were asked whether your statement as to Manning was in writing, or merely from memory: is your memory as to what you have stated as having passed between you and Manning on the 19th March 1866 at all defective or doubtful; did his statements attract your marked attention and astonishment in March or April; answer precisely, yes or no?—My memory is not at all defective or doubtful as to what took place on 19th March last; it was so recent, and I have a good memory. Nothing particularly struck me except seeing his statements in print, and his identifying Mr. Cullen, when he had not mentioned that officer's name to me.

1358. Did Manning, at the same time he spoke to you, offer one single witness other than himself, according to your recollection of what occurred?—He said or did no more than I have already stated, nor did he offer me any information, or the names of any witnesses; otherwise I should have felt it my duty to summon them.

1359. *By Court.*] You have stated that you saw Anderson first at Golden Grove on the 17th March 1866: was he examined on that day before the Commission?—He was.

1360. You have stated that Anderson did not give any information on this subject to you on the 17th March: did you make any inquiry of him on it?—No.

1361. You have said the names of the three men, the subject of this present charge, were handed to you on 13th March: as solicitor to the Commission, can you tell the date on which evidence on the subject was first given by any witness before the Commission?—From what I saw in print, I believe information was first given before the Commission by Anderson on the 17th March; and, of my own knowedge, information was given by Manning at Morant Bay on the 19th March before the Commission.

1362. You stated that the list was sent to you by Mr. Roundell on the 13th, how was it that the names did not appear "on your list to be accounted for" until the 19th March?—I had that list on the 13th, but the 19th was the day on which a Court was held, at which inquiry respecting these men was gone into.

Before withdrawing, the Witness hands in a copy of one of the printed placards (alluded to by him in reply to Question 1340), which was marked (I.), signed by the President, and attached to the proceedings.

[The Witness then withdraws.

It being now 3.45 p.m., the Court adjourns till 10 a. m. to-morrow, the 8th inst.

Twenty-Second Day, 8th November 1866.

On Thursday, the 8th November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday.

Fourteenth Witness for Defence.

No. 252, Lewis O'Connor, Serjeant in E Company, 1st West India Regiment, being duly sworn, is questioned by Prisoner.

L. O'Connor. — 8 Nov. 1866.

1363. *By Prisoner.*] Were you one of the soldiers who marched with Ensign Cullen from Manchioneal, by the Iron Bridge, past Manning's shop, and on to Golden Grove?—Yes.

1364. Did you halt on that march at the Post-office, at Manning's shop, on Saturday, 21st October 1865?—Yes.

1365. While halting at Manning's shop, the Post-office, on that march on Saturday, 21st October last year, did you shoot any three prisoners, or did you see or hear any three prisoners shot, at or near the Iron Bridge, or by the grass piece near the Post-office?—No.

1366. About how many men marched from Manchioneal on that Saturday?—About 25.

1367. Were the men mounted or not, on that march?—Mounted.

1368. Did you go on your march in "light marching order"?—Yes.

1369. *By Prosecutor.*] How long did you remain at the Post-office?—About three or four hours.

1370. At what hour did you arrive there?—About 9 a.m.

1371. Were all the 25 men mounted?—They all started mounted; but some of them who can't ride when they reach half-way, let go their horses.

1372. Who commanded you; did the commanding officer arrive with you at the Post-office?—Mr. Cullen was in command; he arrived with us at the Post-office.

1373. Did you or any of the men get any refreshments at the Post-office?—Yes; I did, and some of the men did.

1374. Did all the men who left Manchioneal arrive with you at the Post-office?—Yes.

1375. What did you get to eat at the Post-office?—Bread; we had brought our rations cooked in our havresacks.

1376. Who did you see at the Post-office when you arrived there?—I saw the man in charge of the Post-office, and a woman, and another man; no other man stopping there.

1377. What are the names of the man in charge of the Post-office, the woman, and the other man?—I know the name of the man in charge is Manning; but I do not know the names of the woman and the other man.

1378. You say you saw no other man stopping there; did you see any other man, or woman, or boy, or girl; if so, state such of the names as you know?—I saw some passing up and down the road; I know none of their names at all.

1379. You say you saw some people passing up and down the road; do you mean travelling, or going from one place to another, and not stopping at the Post-office?—They did not stop at the Post-office.

1380. Did you see any one besides Mr. Manning and the man and woman whose names you do not know, come to the Post-office while you were there and remain; not those who only passed without stopping?—No.

1381. Then, is the Court to understand that during all the time you were at the Post-office, no one came there, except the few people who passed, and you found none there except the three you referred to?—No one came there while we were there, except the people passing.

1382. Tell the Court, as near as you can remember, how many people passed the Post-office while you were there?—I cannot recollect; I did not count them.

1383. What did you do during the time you remained at the Post-office?—I was sitting down at the Post-office outside the door.

1384. Are you rightly understood to mean that the people who passed did not stop, or halt, at all?—They did not stop there at all.

1385. Are you a native of Jamaica; and if so, where were you born; in what parish?—I am a native of Jamaica; I was born in the parish of Trelawney.

1386. Tell the names of all the non-commissioned officers who accompanied the detachment?—Corporal Hunter, myself, Corporal O'Connor, Corporal Maddix, Corporal Skeen, Corporal Chaplin, Corporal Beckles, Serjeant Stubbs; I do not remember any more; these were all coloured men, except Corporal Maddix, he is a white man.

1387. You say Mr. Cullen was in command of the party; was any other officer with the detachment?—Dr. Morris was.

1388. Where did the officers go when you arrived at the Post-office?—They were inside the Post-office, in the house.

1389. Which part of the house; in the shop or the hall?—In the shop.

1390. Were both officers in the shop the whole time the detachment remained at the Post-office?—Yes.

1391. Did neither of them come into the road or out of the shop at all during all the time they were at the Post-office?—No.

1392. When the detachment left the Post-office where did it go to?—To Golden Grove.

1393. Did all the officers, non-commissioned officers and men who came from Manchioneal, go to Golden Grove together?—Yes.

1394. Did anyone go with them not being of your military detachment?—No one went, except those who belonged to the party.

1395. Did anyone come from Manchioneal with the detachment, except the officers, non-commissioned officers and men?—Only them.

1396. Were you awake all the time you were at the Post-office?—Yes.

1397. Did you ride or walk from Manchioneal to the Post-office?—I ride.

1398. Whose horse did you ride, and on whose saddle?

saddle?—I got a horse from Port Antonio, and the saddle there too.

1399. Did you hear any claim made for a horse or a saddle while you were at the Post-office?—No.

1400. Did you see any people come to the Post-office from the direction of the Duckenfield Estate?—I did not notice; there are cross roads, and I did not see which road they came, whether from Duckenfield or cross road.

1401. Did you hear any cry of "Prisoners," or "Prisoners are coming," or "Prisoners got away," while you were at the Post-office?—No.

1402. Who, then, did you see come, whether from Duckenfield or the cross road?—Some civilians passed; little boys.

1403. Did you see any prisoners brought in to the Post-office; any tied to any of the posts of the shed in front of it, or any led away from the Post-office?—No.

1404. *By Prisoner.*] You say all the men arrived with you at the Post-office. When you arrived at the Post-office, was there any roll-call of the men. Had there been any roll-call at Manchioneal before you started?—There was a roll-call at Manchioneal, but we did not call the roll at the Post-office. *L. O'Connor.* 8 Nov. 1866.

1405. Was there any roll-call when you left the Post-office to march to Golden Grove?—No.

1406. Do you remember if Serjeant-Major Wolstenholme, of the 6th Regiment, was there on this Saturday, amongst the others whom you have named?—Yes, he was.

1407. You say you yourself rode. Where were your horses kept about the Post-office. At the back or front, or side of the house, or where?—At the side of the house—the Golden Grove end—in the Grass-piece belonging to the Post-office.

1408. You say you did not see any other person stop at the Post-office, but the man Manning and the woman, and that you remained sitting at the Post-office. Do you mean that you remained in the same one spot all the time, three or four hours; or did you move about now and then a little from place to place about the shop; for instance, to see after your horses?—I move about now and then.

[The Witness withdraws.

Fifteenth Witness for Defence.

No. 2651. Corporal WILLIAM HUNTER, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

1409. *By Prisoner.*] How long have you been in the service?—Ten years, one month, and thirteen days. Corporal *W. Hunter.*

1410. Did you go from Manchioneal by the iron bridge to Golden Grove on the same detachment with Ensign Cullen and Dr. Morris, on Saturday, 21st October, last year?—I did.

1411. Did you halt at Manning's shop (at the Post-office) on that same march on that Saturday, 21st October, last year?—I did.

1412. Did you at or near the iron bridge, or Grass-piece, near Manning's shop, shoot, or did you see or hear, any three prisoners shot, that same Saturday, October 21st, last year?—Not on my march, that day.

1413. Did you see or take charge of, or have anything to do with, three prisoners, said to be in custody of a bookkeeper and constables, or any one else, about the Post-office that same Saturday?—No.

1414. Did you have a sword in your hand at or about the Post-office that same day, with brains upon it?—No.

1415. Are you a native of St. Thomas-in-the-East. Have you any cousin of the name of Elizabeth or Eliza Phillips, that you know of?—I am a native of St. Thomas-in-the-East. I do not know that I have any cousin of that name.

1416. About how many men started with you and that detachment from Manchioneal on that same Saturday?—I cannot recollect.

1417. Do you know Lone, who was one of the men in that same detachment, that same Saturday. Is he alive, or dead?—I do not recollect a man of that name.

1418. Do you know a soldier who died in Spanish Town the other day?—I know a man named Lone who died the other day; he was on that same party with me, on the Saturday.

1419. *By Prosecutor.*] At what time of day did the detachment arrive at the Post-office?—I cannot say.

1420. How long did it remain at the Post-office?—I say about five minutes; I had not got a watch; I was one of the advance guard; and the time I was there was about five minutes.

1421. When you arrived at the Post-office whom did you see there?—I see the postmaster, and many people passing by, whose names I do not know.

1422. Do not, at present, speak of the people passing by, but say how many people other than the postmaster you saw at the Post-office?—I saw no other persons but the postmaster and the postman, who had just arrived as we got there.

1423. Where did the post arrive from?—Returning back from Manchioneal.

1424. Did the whole detachment which left Manchioneal arrive together at the Post-office?—They did.

1425. What officers accompanied the detachment from Manchioneal to the Post-office?—Ensign Cullen and Dr. Morris.

1426. Mention again the names of all the persons you saw at the Post-office when you arrived there; and if you do not know the names of any, describe them?—I do not know the names of any, except the postmaster, Manning. I saw the postman, but I do not know his name. I saw people in the shop, but not in the Post-office; they were black and coloured people, buying things in the shop, males and females, as far as I can recollect. I cannot describe them further than that they were black or coloured, as I had nothing to say to them. There were about four or five.

1427. Did those people or any of them remain at, in, or near the Post-office or shop until the detachment went away?—I cannot say, because I was on the advance guard, and many of us.

1428. Did the whole detachment move off together, and in what direction?—I cannot say about the detachment, as I was on the advance guard. The direction was, after crossing the iron bridge, turn to the right and go on to Golden Grove.

1429. How long after you arrived at Golden Grove

Corporal *W. Hunter.*
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Grove did the rest of the detachment join you?—I cannot say, because, as soon as I got in, I went away to look for a place for the detachment to stop in at Golden Grove.

1430. Did you leave the four or five people at or near the Post-office when you left?—I left them there; but one or two were just going away, passing the bridge.

1431. Can you tell the Court the time of day at which you arrived at Golden Grove?—About nine o'clock. I heard the clock strike nine when I arrived at Golden Grove.

1432. Did you return from Golden Grove to the Post-office that same day?—No.

1433. How many officers, non-commissioned officers, and men, arrived with you—together with you—at the Post-office?—I cannot tell the number of privates, but I could tell the number of non-commissioned officers and officers who arrived there with myself. There were two officers, three corporals, and two sergeants. There was Mr. Cullen and Dr. Morris. There was Sergeant-Major Wolstenholme and Serjeant Stubbs. There was Corporal Hunter (that is myself), Corporal Beckles, and there was Corporal O'Connor, who is a sergeant now. I cannot tell how many privates there were, because there were 50 men told off the night before for the party; but next morning we could not get them, and we marched off with what we could get.

1434. Although you do not know the number of privates, can you say if all who left Manchioneal arrived with you, together with you, at the Post-office?—I can say so far that the serjeant of the party called the roll, and reported to Mr. Cullen that they were present. This was at the Post-office. Serjeant Major Wolstenholme called the roll, and the witness who was with him was Serjeant Stubbs. When I say he call the roll, I mean he count the men to see if he got as many as he started with.

1435. Who gave you the order to go on as an advance guard to Golden Grove; and how many men went with you?—There were some people come by who said, some of the 6th and some Volunteers had come to Golden Grove. Mr. Cullen told me to go and see if they had come or not. There were several following me, but I cannot say how many; almost the whole detachment.

1436. When you arrived at Golden Grove, did you find that the detachment of the 6th Regiment and Volunteers had arrived there?—I did.

1437. Did any non-commissioned officer beside you go on with the advance guard?—No. I do not know. Several of the men were together; but Serjeant Major Wolstenholme and I were in front.

1438. Did you, on the way to Golden Grove, meet any mounted Volunteers coming to the Post-office?—I did. There were about nine or ten.

1439. What troop of Volunteers did they belong to?—I forget the captain's name now; but they were stationed under him at Golden Grove. They were mounted Volunteers from Kingston.

1440. Was it Captain Astwood's troop?—I do not know him by that name.

1441. During your stay at the Post-office on that Saturday, did you see any one come to the place other than those you saw there when you arrived?—No. I saw people passing by, but saw no one come there; only those that were there when I arrived.

1442. Where did the officer go when you arrived at the Post-office?—I saw him go by the front of the men, and go to the rear. I heard him ask for the rear. Doctor Morris was sick from the time we arrived.

1443. Did you see either of them go into the house or shop, or any part of the building?—Doctor Morris was lying down in the little place next the shop, for he was sick.

1444. Did you see or hear any one speak to Ensign Cullen before you left?—No.

1445. Do you know a man named Anderson, a teacher or schoolmaster?—No.

1446. Do you know a man named Duany, one of the keepers of the Morant Point Lighthouse?—No, I do not know him.

1447. Do you know a woman named Cecilia Robinson, who was a servant of Mr. Manning?—No, I do not.

1448. Where did you leave the officers when you went on with the advance guard?—At the Post-office. Doctor Morris was lying down inside, sick. Mr. Cullen was there, looking after his detachment.

1449. You have said Mr. Cullen gave you the order to go on to Golden Grove; where was he standing or sitting when he did so?—I was leaning on a horse, and he came to me and told me to go on as an advance guard. I was just at the edge of the road, near the body part of the yard, near the shop, at this time.

1450. Do you know if either of the officers got any refreshment at the Post-office?—Not while I was there.

1451. When the serjeant major counted the men, as you say, how did he do it; where were the men?—They were all sitting by the roadside, with their bread and baked meat, which had been baked for them to bring with them. He just counted them.

1452. To whom did you report yourself when you got to Golden Grove?—There was no one for me to report myself to; but soon after Mr. Cullen came up.

1453. How soon after did Mr. Cullen come up?—I cannot say; I did not look at the clock to see the time; but not long after I got there.

1454. How long do you think?—It was not more than three-quarters of an hour, as far as I can recollect. Some of the men were walking, and they could not get on as fast as the others can.

1455. *By Prisoner.*] Was Serjeant Wolstenholme with you on the advance guard from Manchioneal to the Post-office; are you quite sure, or do you only think, that he went on with you, at the same time, to Golden Grove; recollect yourself?—He was on the advance guard with me from Manchioneal, and on the advance guard from the Post-office.

1456. Whereabouts did you meet the eight or nine Volunteers (troopers); was it near the church or the works of Golden Grove; or where?—About 250 yards from the church.

1457. You say the name of the captain of the Volunteer troopers you met was not Captain Astwood; was it Captain Ford?—Yes, Captain Ford.

1458. You say Doctor Morris was lying down sick at the little place next the shop, for he was sick; from what part of the road was he sick?—He was sick from the hill coming down to Amity Hall.

1459. Was he very sick; was he suffering for

from his head, from anything like a sun-stroke?—I cannot say what he was suffering from; but he was ill for a day or two after we got to Golden Grove.

1460. You speak of the post returning back from Manchioneal; were you yourself once employed to carry post letters in St. Thomas-in-the-East?—I did.

1461. How do you come to know George Manning?—I know him because I used to deliver the post from Port Morant to him.

1462. *By Court.*] Who were the people who, as you state, came to say that the soldiers of the 6th Regiment and Volunteers were at Golden Grove?—People who were passing by. They were people living about the estates.

1463. What do you mean by saying that there was no one for you to report to on arrival at Golden Grove, when you have also stated that you found a detachment of the 6th and Volunteers there?—I could not see the officer of the 6th before Mr. Cullen arrived.

1464. Did the detachment arrive with Mr. Cullen?—I do not know. Some part of the detachment did arrive with him, but I do not know if the whole arrived.

1465. Was there a roll called after the arrival of the detachment?—I cannot say. I was in the store, drawing rations for the men.

Corporal *W. Hunter.* — 8 Nov. 1866.

[The Witness withdraws.

Sixteenth Witness for Defence.

No. 1147. Private Fielding Wolstenholme, 2/6th Regiment, being duly Sworn, is questioned by the Prisoner.

1466. *By Prisoner.*] Were you one of the men on the detachment which marched from Manchioneal by the Iron Bridge to Golden Grove on Saturday, 21st October last year, with Ensign Cullen?—I was, I believe, about that date.

1467. Did you halt at the Post-office, Manning's shop, on your march that Saturday, the 21st October 1865, while on that detachment?—Yes.

1468. Did you, while on that detachment at the Post-office, or Iron Bridge, or Grass-piece, or the road about there, on that march, on that Saturday, shoot, or see or hear any three prisoners shot that day by any men of your detachment?—No.

1469. About how many men did you start with from Manchioneal on that detachment on that Saturday. Was there any regular roll-call just before you started?—There were about 30 men, but there was no regular roll-call.

1470. *By Prosecutor.*] At what hour did you arrive at the Post-office?—About 9 a.m.

1471. Did the whole detachment arrive there together?—To the best of my knowledge they did.

1472. Did they leave for Golden Grove together?—Yes, they did.

1473. How long did the detachment remain at the Post-office?—About three hours.

1474. When you speak of the whole detachment, do you mean all the officers, non-commissioned officers, and privates?—I mean the whole, officers included.

1475. Did you have the roll called at the Post-office?—No, they merely numbered off.

Private *F. Wolstenholme.* —

It being now 4 p. m., the Court adjourns till 10 a. m. To-morrow, 9th inst.

Twenty-third Day, 9th November 1866.

On Friday, the 9th November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment:—Present, the same Members as yesterday, and proceeds with the Cross-examination of Private Wolstenholme, 2/6th Regiment.

1476. *By Prosecutor.*] Was the roll called, or were the men numbered off when they got to Golden Grove?—They were numbered off.

1477. What non-commissioned officers accompanied the detachment from Manchioneal?—Corporal Hunter, Corporal O'Connor, Serjeant Stubbs. I am not quite so sure about this serjeant, but I think he was there. I cannot remember the names of any others, if there were any more.

1478. Had any orders or information been received by the officer in command at the Post-office before the detachment left to go to Golden Grove?—Well, I believe two or three artillery officers—they had on a dress something like that—came up, and said to Mr. Cullen something to move on at once, or something like that.

1479. Had any part of the detachment left the Post-office at that time?—I believe Mr. Cullen had sent a section of men under a corporal to Golden Grove to inquire about something.

1480. How, then, did you say yesterday that all the officers, non-commissioned officers, and privates left the Post-office together?—I meant to say there were none left behind the road we came. I thought that was the meaning of the question.

1481. Had you not been asked if the whole detachment arrived together at the Post-office, and did you not answer that they had, to the best of your knowledge?—Yes.

1482. Were you at the Post-office when the persons you called artillery officers came there?—Yes.

1483. Who was in charge of the section that was sent on to Golden Grove?—I think it was Corporal Hunter.

1484. How long had the section gone to Golden Grove before the men you call artillery officers arrived at the Post-office?—About two hours and a half; it might be a little better.

1485. During the time the detachment was at the

Private *F. Wolstenholme.* —

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the Post Office, where were the officers?—At the Post-office. Doctor Morris was in a room adjacent to the Post Office, and Mr. Cullen was sometimes in there, and sometimes in the shop.

1486. When you arrived at the Post Office, whom did you see there. Tell as fully as you can; if you do not know the names, describe the persons?—I only took particular notice of one person, the postmaster—Mr. Manning I believe his name is. There were persons, male and female, knocking about, passing up and down, but at the Post Office itself I only saw Mr. Manning.

1487. Did you notice if any persons came to the Post-office while you were there?—I did not, except the two officers that I have already mentioned.

1488. Did you remain at the Post Office all the time the officers remained there; and if so, were you awake all the time?—I was there all the time, and awake all the time.

1489. Did you see any men brought in to the Post Office tied, and said to be prisoners?—No.

1490. *By Prisoner.*] You say artillery officers, you believe; were they artillery officers, or do you think they may have been volunteer troopers. Were they not dressed in buff and blue short jackets?—They might have been, but I did not take particular notice, as I immediately began to fall in the men.

1491. You said that the whole number consisted of about 30: do you intend the Court to understand that these 30 included all the officers, non-commissioned officers, and privates who marched from Manchioneal to the Post Office, and then a section first and the rest afterwards to Golden Grove on that same Saturday?—I mean there were 30 men exclusive of officers.

1492. You say Dr. Morris was in the room at the Post Office; was anything the matter with Dr. Morris?—Yes; he was sick.

1493. What rank did you hold when with this detachment, marching from Manchioneal to Golden Grove?—Company Serjeant Major of No. 7 Company. I was the senior non-commissioned officer present.

1494. As senior non-commissioned officer of the detachment, did you assist in parading it; in looking after its rationing and discipline on the march and in billets?—I did assist in parading the detachment. I also looked after its discipline and billets. Their rations were served out at Manchioneal before marching off. I cannot remember by whom.

1495. What did the rations consist of, and for how many days were they issued?—I am not quite sure; but I think they consisted of salt meat and biscuits; and I believe they were issued for one day only.

1496. Did you individually draw rations for that same day; that is, for yourself?—I did; I think they were salt meat and biscuits.

1497. Was the roll of the detachment called, before it marched from the Post Office to Golden Grove. If so, who called the roll and told it off?—The roll was not called; they were numbered off by myself; they were all present, except the section that was at Golden Grove.

1498. When the detachment left the Post Office for Golden Grove, was an advance guard formed?—I do not remember; but there was an advance guard from Manchioneal to the Post Office.

1499. How is it you can remember as to an advance guard being formed on one part of the march, and not on the other, on the same day?—Because there was an interval of six months, before I heard anything of that march.

1500. Who selected the section which went to Golden Grove under Corporal Hunter; who paraded the party and marched it off?—Mr. Cullen. I was standing at the steps of the Post Office, and they paraded just in front.

1501. How many men were there in that section?—About eight or ten. I can only give the corporal's name of this party.

1502. State the regiment to which the men belonged, of this section?—All of 1st West India Regiment.

1503. State the company to which the men belonged?—I do not know.

1504. Did they, or any of them, belong to your own company, No. 7?—I do not remember.

1505. Was there any other non-commissioned officer with that section?—Not to my knowledge.

1506. When you numbered off the detachment at Golden Grove, on arrival, did you find it all present?—Yes.

1507. When the detachment was numbered off at Golden Grove on arrival, did it include that section?—They were watching us come in, and I believe they fell in on the left afterwards; on the left of the detachment. They were then complete in their numbers, corporal and men. I allude to Corporal Hunter.

1508. Were rations drawn for the detachment at Golden Grove?—I believe they were drawn that night for the following day.

1509. Where were they obtained?—I do not remember.

1510. Who drew the rations at Golden Grove for the detachment?—I do not remember that.

1511. At what hour did the detachment arrive at Golden Grove?—I would say about 1 p. m., or it might be a little before 1.

1512. What arrangements were made for drawing the rations of the detachment?—I do not remember; but I mean this to apply to Golden Grove. At Manchioneal, I think the rations were got from on board ship; but I know very little about the arrangements, as I had little to do with it, beyond seeing that the men got their rations.

1513. How long had the section which left the Post Office for Golden Grove, been at the Post Office before it marched?—I should say about a quarter of an hour.

1514. At what hour did the artillery officers, or volunteers, as you say they may have been, arrive at the Post Office?—I would say about 12 noon.

1515. Did any men who had not fallen in with the detachment, which left Manchioneal in company with you, follow and join the detachment either at the Post Office, or afterwards at Golden Grove?—Not to my knowledge.

1516. Did all your detachment leave Manchioneal mounted; did they keep together during the march, and did the whole arrive together mounted at the Post Office?—I do not remember whether all were mounted on leaving Manchioneal. They kept together during the march. The whole arrived together at the Post Office, but as to being mounted, I cannot say.

1517. Whereabouts did you march, as regards the column, on the road from Manchioneal to the Post Office?—With the advance guard. Corporal Hunter was also with the advance guard.

1518. Whereabouts

1518. Whereabouts did you march, as regards the column, between the Post Office and Golden Grove?—I believe I marched with the remainder of the detachment; but I cannot say whether I was leading or on the reverse flank.

1519. Did the two volunteers accompany the detachment under Ensign Cullen, from the Post Office to Golden Grove?—I cannot say whether they did not go before us or not.

1520. Do you remember how the detachment broke off at the Post Office; how the arms were disposed of, piled or left in the care of the men individually?—I believe the men were regularly dismissed; and I think the arms were piled outside the Post Office, just in front of the door.

1521. Were the men allowed to go to any distance during the halt?—They were not.

1522. How far from the main body was the advance guard, when on the march, from Machioneal to the Post Office?—I should say about 30 yards.

Private *F. Wolstenholme.* 9 November 1866.

1523. Did the whole detachment belong to the 1st West India Regiment?—They did.

1524. Do you know the reason why the section under Corporal Hunter was sent such a long time in advance of the main body from the Post Office to Golden Grove?—I do not know the reason, exactly. I am not quite sure; I did not particularly notice the words; but Mr. Cullen told Corporal Hunter something to the effect that if Mr. Adcock's party was at Golden Grove, he (Corporal Hunter) need not return.

[The Witness withdraws.

Seventeenth Witness for Defence.

No. 740. Private GEORGE LESLIE, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

Private *G. Leslie.*

1525. *By Prisoner.*] WERE you one of the detachment which marched with Ensign Cullen and Dr. Morris from Manchioneal on by the Iron Bridge to the Post Office, and afterwards to Golden Grove, on the same day, Saturday, 21st October, last year?—Yes, I was along with him.

1526. Did you halt on that march at the Post Office at Manning's shop, that same day on which you marched with Ensign Cullen and Dr. Morris from Manchioneal to Golden Grove?—Yes.

1527. Did you, at or near the Iron Bridge, Grass piece, or Post Office, or that road about there, yourself shoot, or see or hear shot, by soldiers of the detachment, any three prisoners on that same Saturday, when you were on that march under Ensign Cullen; did you see any three prisoners brought there that same day by constables or book-keeper?—No, I have not shoot a man; nor did I hear or see any shot. I saw no prisoners that day.

1528. *By Prosecutor.*] What time of day did you arrive at the Post Office on 21st October 1865?—At 9 a. m.

1529. How long did the detachment remain at the Post Office on that day?—We started from there at 3 p. m.

1530. Did you go to sleep, or did you bathe, or what did you do with yourself all the time?—I did go to the river and bathed; the river is only a few paces off the yard. I did not go to sleep, to my recollection.

1531. How long were you away while bathing; and could you see or be seen from the yard?—I was not long in the river. Where I was I could see the yard; and a person there could see me.

1532. Did you all go to Golden Grove together; that is, all the officers, non-commissioned officers, and privates of the detachment, from the Post Office?—Yes, we marched off, just as we marched off from Manchioneal.

1533. Name the non-commissioned officers who marched off from the Post Office with the men and officers?—I can only recollect the names of the Serjeant Major, Wolstenholme; and of Corporal Hunter, Corporal O'Connor, who is now a serjeant.

1534. All these, you say, went together from the Post Office to Golden Grove; you are quite certain, are you?—They all went together, I am certain.

1535. Did all the privates go with them?—Yes.

1536. You are certain that none were left behind?—Yes.

1537. And that none straggled or strayed away or went away before the others?—I did not see any.

1538. Whom did you see at the Post Office, when you arrived there; tell all the names, and describe those whose names you do not know?—I only know the man at the Post Office, and I do not know his name. I did not see anybody else, to my recollection.

1539. Did you see anybody come to the Post Office while you remained there?—I saw the man who was carrying the mail for the post.

1540. *By Prisoner.*] You were asked, on cross-examination, about detachment; when were you enlisted; do you understand the meaning of military terms; were you not a recruit only in June last year?—I was enlisted in August 1865; somewhere about the 12th: I do know some military terms.

1541. You say you marched off from the Post Office to Golden Grove, the same as you marched from Manchioneal; was not a section of the men sent on first under Corporal Hunter?—Not to my knowing.

1542. How long did you remain at the river; may not Corporal Hunter have been sent on by Ensign Cullen without your knowledge, and while you were at the river?—I was not long at the river: when I came back from the river I saw him.

1543. Did you go with what is called the advance guard from the Post Office to Golden Grove, or did you go with the main body of the detachment from the Post Office to Golden Grove?—I marched off with the commanding officer.

1544. You say you are certain that Serjeant Major Wolstenholme and Corporal Hunter all went together from the Post Office; did they all go together at the same time; was not a section sent on first by Ensign Cullen; recollect yourself?—They all went at the same time. I have no knowledge of a section being sent on.

1545. Did not the commanding officer march with the main body from the Post Office to Golden Grove?—Yes, he marched with the men into Golden Grove.

1546. You say you went to the river to bathe; from

Private *G. Leslie.* 9 November 1866.

from the place where you bathed, could you not have heard volleys of guns, if they had been fired, near the Iron Bridge?—Yes.

1547. How many paces is the bed of the river, where you bathed, from the Post Office; show what you think is the distance?—From the yard into the water, is not more than 24 paces; it runs in the yard, in a manner.

1548. *By Court.*] Did you see Corporal Hunter, during the march from Manchioneal to the Post Office; whereabouts was he?—I saw him; he was marching in front.

1549. Did you see him on the line of march from the Post Office to Golden Grove?—I saw him in front of the men.

[The Witness withdraws.

Eighteenth Witness for Defence.

No. 693. Corporal ALLEN MADDIX, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

Corporal *A. Maddix.*

1550. *By Prisoner.*] DID you march from Manchioneal to Golden Grove, by the Iron Bridge, and past the Post Office on to Golden Grove, on Saturday, 21st October last year, and did you halt at the Post Office?—I did march on that date, and halted at the Iron Bridge Post Office.

1551. What rank did you hold at the time when you marched with Ensign Cullen from Manchioneal, on to Golden Grove?—I was a lance corporal at the time.

1552. When you got to the Post Office was a section of your detachment sent on to Golden Grove by Ensign Cullen, and under whose command?—There was a section sent on under Corporal Hunter's command, after we had been there about 10 minutes.

1553. About what time did you arrive at the Post Office that same Saturday, with Ensign Cullen, and about what time did the main body leave the Post Office that same day under Ensign Cullen; how many hours do you think you remained there?—We got there about 9 a.m., and the main body left about 12 noon; but I am not certain about the time.

1554. While halting at the Post Office on that road, did you shoot, or see or hear any three prisoners shot, by soldiers of your detachment, on that same Saturday, near the Iron Bridge, or grass piece, opposite Manning's shop?—I did not.

1555. Did you see any three prisoners brought to the Post Office that same Saturday, by constables and a book-keeper, and tied anywhere near the Post Office?—I did not.

1556. *By Prosecutor.*] How many officers, non-commissioned officers, and men formed the detachment from Manchioneal to Golden Grove?—There were two officers; I am not certain about the non-commissioned officers; but non-commissioned officers and men, about 25.

1557. Did all the officers, non-commissioned officers and men arrive at the Post Office together from Manchioneal?—Yes; they did.

1558. Whom did you see when you arrived at the Post Office?—I saw a brown man there, who was said to be the Postmaster.

1559. What did you yourself do while you were at the Post Office; did you remain at that place the whole of that time; if so, were you awake all the time?—I was awake the whole time; I was there the whole time; I was waiting on Dr. Morris, for he was sick.

1560. Did you see no other person than the brown man there, when you arrived, and did you see no one come there while you remained?—Beside the brown man, I saw another man serving in the shop; I did not see any one come there; the other man I saw there, was about the same colour as the Postmaster.

1561. Did you see anything given to Dr. Morris, by way of refreshment?—I did not; nothing to drink, only some Florida water to wet his head with.

1562. Did you speak to either of these men, or did you hear their names; I mean the Postmaster and the other man you saw in the shop?—I spoke to neither of them; I heard the Postmaster's name was Manning, but I do not know whether that is his right name. I do not know the other man's name.

1563. Are you sure that you saw no person at all come to the Post Office while you were there, either to the Postmaster, the other man, or either of the officers?—I did not.

1564. *By Prisoner.*] You are asked whether you saw any other man come there; by man do you mean civilian or not?—

The Prosecutor inquires whether the question is framed in exact accordance with that used in cross-examination; and the prisoner, on being informed that the word used was "person," not "man," requests that his question may be amended accordingly.

To the question thus amended, the Witness replies:—

A.] They may have come there, but none did to my knowledge. By "person," I mean "any one."

1565. You say you were waiting on Dr. Morris, who was sick; what was the matter with him?—I do not know what was the matter with him, but he was complaining of fever and headache.

1566. *By Court.*] How was the detachment armed?—With rifles and bayonets.

1567. Were your rifles loaded when you left Manchioneal?—Mine was not; I cannot say for the others.

1568. What did you do with your arms during the halt at the Post Office?—Every man had his own arms when he fell out; but we were not allowed to go out of sight of the Post Office.

1569. Can you state whether any men, who did not parade with your detachment at Manchioneal, followed after your party, and joined you either at the Post Office, or afterwards at Golden Grove?—I cannot say.

[The Witness withdraws.

It being now 4 p.m. the Court adjourns till 10 a.m. to-morrow, 10th inst.

Twenty-fourth Day, 10th November 1866.

On Saturday, the 10th November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment:—Present the same Members as yesterday, but owing to the non-attendance of any witnesses for the defence, the proceedings of the Court were delayed for half-an-hour.

Nineteenth Witness for Defence.

No. 285. Private Morris Gordon, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

Private *M. Gordon.*
10 November 1866.

1570. *By Prisoner.*] Were you one of the men on the same march with Ensign Cullen and Doctor Morris and others, from Manchioneal past the Iron Bridge to the Post Office, and then on to Golden Grove in October last year?—Yes; I was.

1571. When you arrived at the Post Office, were some men, a section of the detachment, sent on, and under whose command?—Yes; a section was sent, to make preparation for the troops, under command of Corporal William Hunter.

1572. While you were on that same march, Saturday, 21st October last year, did you shoot, or see or hear three prisoners shot, that same day?—No.

1573. *By Prosecutor.*] At what hour of the day did the detachment arrive at the Post Office? About 9 a.m.

1574. How long did it remain there?—About three hours.

1575. Did you see anybody at the Post Office when you arrived there?—I saw no one but the Postmaster, Mr. Manning.

1576. Did you see anybody come there while you remained there; anybody at all?—No.

1577. Are you sure you saw nobody at all come to the Post Office during all the time you were there, and until you went away?—No, I saw nobody.

1578. And are you equally sure that you saw nobody there when you arrived, except Mr. Manning; no one at all; no servants?—No one but Mr. Manning.

1579. Who went with Corporal Hunter to Golden Grove; how many officers, non-commissioned officers and privates?—No officers went along with him, I do not know how many of the others went.

1580. How long after the detachment arrived at the Post Office was it, when Corporal Hunter went away?—About 10 minutes.

1581. You say the detachment remained at the Post Office three hours; what did you do with yourself all that time; did you sleep?—No, I did not sleep; I was refreshing myself.

1582. What did you do with your rifle during the time you were at the Post Office?—Slung it across my body, for the whole three hours I was there.

1583. Where was Mr. Cullen during the time the detachment was at the Post Office; what part of the building or the grounds (yard or road)?—He was in the Post Office; Mr. Manning has a private little room where he was refreshing himself; he meaning Ensign Cullen.

1584. Did the whole detachment arrive at the Post Office from Manchioneal together?—Yes; they did.

1585. Was the roll called, or were the men counted after you arrived at the Post Office?—Yes; the roll was called; the men's names were called; and they were counted.

1586. Who called the names out?—Company Serjeant Major Wolstenholme, who is now a private in the 2nd Battalion of the 6th regiment.

1587. Did you answer to your name, and was the roll called before Corporal Hunter went away?—I answered to my name, and the roll was called before Corporal Hunter and a section of men went to Golden Grove.

1588. Did you have any conversation or speak at all to Mr. Manning; did you buy anything at the shop?—I had no conversation with him. I bought things and paid for them.

1589. Who served you with what you bought; what did you buy?—Mr. Manning himself served me. I bought some biscuit, cheese, and a bottle of porter.

1590. Did you see anybody at all in uniform of any sort, or otherwise, come to Mr. Cullen or deliver any message to him while he was at the Post Office?—I saw nobody; I was paying attention to myself and minding my duty as a soldier.

1591. When you arrived at Golden Grove, where did you first see Corporal Hunter; what was he doing?—He was making preparations for the troops, and the book-keeper was giving him provisions for the troops.

1592. Did you meet anybody on your march from the Post Office to Golden Grove?—See nobody.

1593. *By Prisoner.*] You say that at the Post Office, the roll was called, and the names were called, and they were counted. About how many altogether, do you think, was found to be the number of men then present?—I do not recollect.

1594. *By Court.*] Do you remember the names of any of the men sent with Corporal Hunter's section to Golden Grove?—No, I do not.

[The Witness withdraws.

Twentieth Witness for Defence.

No. 730. Private GEORGE CHRISTOPHER BLYTHE, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

Private *G. C. Blythe.* 10 Nov. 1866.

1595. *By Prisoner.*] HAVE you as an invalid just come from hospital?—Yes.

1596. Were you one of the men on the detachment which marched with Ensign Cullen and Doctor Morris and others from Manchioneal to the Post Office, and afterwards on to Golden Grove, last year on a Saturday, the 21st October 1865?—Yes.

1597. When your detachment arrived at the Post Office, do you remember if some of them (a section) were sent on to Golden Grove to Captain Adcock; and under which non-commissioned officer?—A few went on before under Corporal Hunter.

1598. While you were on the march that same day with Ensign Cullen, at or near the Post Office, or Iron Bridge, or grass piece, did you shoot, or see or hear shot, three prisoners (by any of that detachment) that same Saturday?—No.

1599. *By Prosecutor.*] About how many men formed the detachment which left Manchioneal?—I do not remember.

1600. Did all arrive together at the Post Office?—Yes; all arrived together.

1601. When you arrived at the Post Office, was the roll called; that is, were the names of the men called out?—No; they numbered off.

1602. Whom did you see when you arrived at the Post Office; mention everybody, both male and female?—I saw two persons, Mr. Manning and a man like himself; brown man, like himself.

1603. Did you see anybody at all, man or woman, in uniform or plain clothes, come to the Post Office while you were there?—No; I did not see anyone come while I was there; they might have come, but I did not see them.

1604. What were you doing all the time you were at the Post Office; did you go to sleep, or to bathe; and where did you sit or stand?—I was everywhere about; I was sitting one time under the cotton tree, and then I get up; I was not sleeping, and I did not bathe.

1605. Are you quite certain that when you arrived at the Post Office, you saw nobody but Mr. Manning and the one other brown man, and that all the time you remained there, you saw no one else, nobody at all?—I only see Mr. Manning and the brown man; there might have been some come while I was there, but I did not see them, only Mr. Manning and the other brown man.

1606. Did you see any prisoners brought in to the Post Office, or any black men in custody or charge of others?—No.

1607. How long did the soldiers stay at the Post Office; state as near as you can the hour at which the detachment arrived, and that at which it left?—I have no timepiece, but judging the time, about three hours. It arrived about nine a.m., and I judge that they left about three hours after that.

1608. Did you hear any report of guns while you were at the Post Office?—No.

1609. How long after the detachment arrived at the Post Office did the few men go on with Corporal Hunter to Golden Grove?—About 10 minutes.

1610. Did you meet anybody at all on the march from the Post Office to Golden Grove?—That I do not remember.

1611. *By Court.*] Do you remember the names of any of the men who went on with Corporal Hunter from the Post Office to Golden Grove?—No; because I did not recognise the men distinct.

[The Witness withdraws.

Twenty-first Witness for Defence.

WILSON OSWALD LOFTHOUSE, Musical Instrument Seller, Kingston, being duly Sworn, is questioned by the Prisoner.

W. O. Lofthouse.

1612. *By Prisoner.*] WERE you on the troop of Captain Adcock or Captain Astwood on the march of mounted troopers from Golden Grove towards the Post Office, near the Iron Bridge, on Sunday, the 22nd October last year, with Lieutenant Brass?—I was; I rode with Lieutenant Brass; I rode on the right file; there were two troopers before us, about 100 yards, troopers Brandon and Berry.

1613. Do you remember whether on the Sunday morning, before you went over the Iron Bridge towards Amity Hall, you, with Lieutenant Brass, mistook the road, and went by some logwood fence and bamboos, straight on instead of going over the Iron Bridge at first?—I recollect it perfectly well; Captain Adcock, I think, discovered the mistake.

1614. Did any one call you back from that road because you had taken the road straight on instead of turning to the left over the bridge towards Amity Hall?—We were ordered to halt, and a trooper, or Mr. Harrison, I forget which, was sent on to call back the advance guard troopers, Berry and Brandon; I think it is understood that we had gone on the wrong road some distance.

1615. Did you on that road, as you went with Lieutenant Brass, see any crows in the grass-piece on that lower road which you mistook, or smell any dead bodies?—I neither saw any crows nor smelt anything offensive or bad.

1616. On the road which you that Sunday morning mistook, did you, as far as you went, and as far as you could see forwards on that road, take notice of any three dead bodies lying on the road, or tied up against any fence or rail about that road?—I did not see any at all.

1617. About what time did you leave Golden Grove that Sunday morning, and about what time did you arrive near the Iron Bridge, on the road towards Amity Hall?—I think we left Golden Grove between seven and eight a.m., and I should

I should think we had been riding about 20 minutes or half-an-hour; I cannot be positive about the time before we were halted, because we had mistaken the road.

1618. About how far down that wrong road did you go before you turned back to go the right road towards Amity Hall?—I cannot say how far, but a considerable distance; I cannot say about how many yards, because the place was strange to me; I had never been in the district before.

1619. Did you on that Sunday morning see or hear any eight or nine people with shovels and hoes on that wrong road, or near it, or on the right road over towards Amity Hall, across the Iron Bridge?—No; I do not recollect seeing anybody at all.

1620. If you can give any idea, show the distance you believe you went on the wrong road before you were halted?—I can give no idea of the distance; the place was strange to me, and I did not take notice riding along.

1621. Were you ordered to keep a sharp look out along your route that Sunday morning?—I do not recollect receiving any particular orders to that effect. If I had seen anything suspicious, I should have called the attention of the lieutenant to it, who was riding alongside of me.

1622. *By Prosecutor.*] How many of you left Golden Grove together on the Sunday morning?—I do not recollect the number; the whole of those at Golden Grove went, except, to the best of my knowledge, the black soldiers. Ford's Volunteers were with us; but I do not know how many of us we were; I should say there were about 20 of our troop; that is Captain Astwood's; had I ridden behind instead of in front I should have better seen how many were there.

1623, Did you ride together, or how; that is the troop from Golden Grove to the Post Office?—We rode two and two together.

1624. Did the whole troop ride in that way, all within sight of each other; you and Lieutenant Brass included?—Well, I cannot say whether those behind me straggled or not; all that I can answer for are the two men behind me; I generally kept my eye on the right side; these two behind were generally pretty close to me, a horse's length or so. I knew they were there, because they occasionally spoke to me, and asked questions.

1625. Could you hear the others of the troop behind you?—Yes; I know they kept pretty well together, because you could hear the tramp of the horses; but I mean this for the bulk of the troop; I cannot say for those in the very rear.

1626. Did you turn back with Lieutenant Brass into the right road?—Yes.

1527. *By Prisoner.*] You have spoken of about 20 volunteers being on that march on that Sunday morning; do you know if soldiers of the 6th Regiment were also there?—There were about a dozen of the 6th Royals, besides Ford's Volunteers; they came from Morant Bay with us, and the men of the 6th Regiment went with us wherever we went.

W. O. Lofthouse.

10 Nov. 1866.

1628. Do you know whether Mr. Allen, of whom you spoke just now as one of the troop on the same Sunday morning, is now in this island or in England?—I cannot say whether he is in England, but he is not in the island; he left it some time ago.

1629. *By Court.*] On that Sunday morning, of which you have been speaking, do you mean to say that Troopers Berry and Brandon were 100 yards in advance of you, and that they took the wrong road as well as yourself, or had they crossed the Iron Bridge before you arrived there?—They took the wrong road, and we followed them.

1630. What bounded the road you took by mistake, on both sides, as far as you went or could see?—I cannot say; I know that on my side, the right, the road was not an open space; that there was a fence of some sort; but more than that I cannot say.

1631. Did you pass the Post Office before you took the wrong road?—We must have got on the wrong road before we come to the Post Office; I say that, from what I now know, as at the time I did not notice the Post Office at all.

1632. When did you arrive at Golden Grove on Saturday 21st October 1865?—It was in the afternoon; I cannot state distinctly about the hour.

1633. Did you find any other troops there on your arrival?—No, there was no body of troops; I remember the black soldiers coming in after we had arrived.

1634. Could there have been any soldiers there without your seeing them?—There might have been, as there was the overseer's quarters; behind that the book-keeper's barracks, and the hospital on one side.

1635. Is there any road at all by which you can possibly turn wrong between the Golden Grove-road and the Post Office, to your recollection, till you have come near up to the Iron Bridge?—As I have said before, the place was strange to me; I do not know the district.

1636. Is the road which you wrongly took the same road on which Mr. Harrison, or a trooper, was sent to call back the advance guard?—It must have been, because I could see the advance guard halted in front of me.

[The Witness withdraws.

The Court adjourns at 2.20 p.m. till 10 a.m., Monday, 12th instant.

Twenty-fifth Day, 12th November 1866.

On Monday, the 12th November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as on Saturday, 10th instant.

The Prisoner, Ensign Cullen, 1st West India Regiment, not being present, his absence is accounted for by—

J. P. Street, M.D.
12 Nov. 1866.

Staff Surgeon J. P. Street, M.D., who, being duly sworn, informs the Court that he has been in medical attendance on Ensign Cullen, yesterday, and again this morning; that he is suffering from fever, which renders it unadvisable that he should quit his room; that danger might result from his doing so, and that he had therefore placed him on the sick list. Witness adds that, in cases of fever, it is impossible to state any definite period as to when recovery will take place; but he considers that it would be both imprudent and unadvisable that Ensign Cullen should attempt to attend the Court for the next two or three days.

[The Witness withdraws.

The Court is cleared for deliberation.

The Court is re-opened, and it is announced that, in consequence of the prisoner's illness, the Court adjourns till 10 a.m., Thursday, 15th instant.

Twenty-sixth Day, 15th November 1866.

On Thursday, the 15th November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment; Present, the same Members as on Monday, 12th instant.

15 Nov. 1866.

The Prisoner, Ensign Cullen, 1st West India Regiment, being still absent, the Deputy Judge Advocate hands in a medical certificate, signed by Staff Surgeons Woodman and Dunlop, which stated that Ensign Cullen was still suffering from fever, and that his attendance before the Court might be followed by dangerous results.

This certificate further stated that, in the opinion of the medical officers, Ensign Cullen would not be able to attend the Court, with safety, before Monday, 19th November 1866.

The certificate is read in Court, marked (K.), signed by the President, and attached to the proceedings.

Under these circumstances, the Court adjourns till 10 a.m., Monday, 19th instant.

Twenty-seventh Day, 19th November 1866.

On Monday, the 19th November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as on 15th instant; and proceeds with the Defence.

Twenty-second Witness for Defence.

William Hosack, Custos of the Parish of St. George's, residing at Montpellier, being duly sworn, is questioned by the Prisoner.

W. Hosack.
19 Nov. 1866.

1637. *By Prisoner.*] Do you know Samuel Bryan, who is now under Mr. Sinclair in St. Thomas-in-the-East, and was he at [one time in your employment?—He was at one time employed at Llanrumney Estate, which belongs to me, under Mr. Sinclair, the overseer. He was head man. I presume he is the man alluded to by that name of Samuel Bryan, a yellow-skinned negro, or Sambo.

1638. Can you give the Court your evidence as to the general character of Samuel Bryan; is it good or bad?—Bad, in my opinion; he bears a bad character on the estate among the negroes.

1639. *By Prosecutor.*] Who is the Mr. Sinclair under whom Bryan served at Llanrumney Estate; is he the same Mr. Sinclair who is now overseer at Duckenfield?—I believe so.

1640. *By Court.*] When was Samuel Bryan in your employment, and for how long?—Last time I saw him was in April 1865; and I believe he remained in my employment till the following July; about the time Mr. Sinclair himself left. He had been in my service for some time, but without reference to documents I could not give the time.

[The Witness withdraws.

Twenty-third Witness for Defence.

Captain W. J. Ross, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

Captain *W. J. Ross.*

19 Nov. 1866.

1641. *By Prisoner.*] WHERE were you stationed in St. Thomas-in-the-East during martial law?—At Morant Bay and Port Antonio.

1642. Have you any roll of the men who were likely to have been on the detachment under Ensign Cullen, on a march from Manchioneal by the Iron Bridge to Golden Grove?—Of my own knowledge I could not say who the men were likely to have been, I not having been present myself.

1643. Can you tell the Court what has become of most of the men believed to have been on that detachment?—The greater number have gone to Africa.

1644. Was any application made to your knowledge by Ensign Cullen or Dr. Morris, when the men who have gone to Africa were supposed to be going away, in order that they might give evidence on the inquiry mentioned in the English papers?—Doctor Morris' letter was addressed to me, requesting that I would cause certain men to be detained as evidence on the forthcoming inquiry.

1645. Can you tell whether the men of the detachment which marched under Ensign Cullen were all taken from one company, or from parts of several companies?—They were taken from parts of four companies.

1646. Did frequent changes take place in those detachments in St. Thomas-in-the-East?—Not to my knowledge.

1647. Are you aware whether or not two men believed to be on that detachment under Ensign Cullen, were reduced at Manchioneal, for being absent?—I am aware that two non-commissioned officers of the 1st West India Regiment were reduced for absence without leave, belonging to the Manchioneal detachment.

1648. When did Ensign Cullen join his regiment in this island?—About the month of June 1865.

1649. Since you have known Ensign Cullen, what has been his character and conduct as an officer and a gentleman; is he a humane man, or not?—His character and conduct have been most exemplary; he is a humane man.

1650. *By Prosecutor.*] If you could not tell of your own knowledge what men were on the detachment under Ensign Cullen, how can you tell of your own knowledge that the greater number of the men who were on the detachment have gone to Africa?—I had occasion to pay the detachment at Manchioneal during the rebellion, in October 1865, and I therefore know the names of all the men of the four companies, and I know that they are either out of the island, or here in Kingston.

[The Witness withdraws.

Twenty-fourth Witness for Defence.

No. 932, Lance Corporal JOSEPH BEDFORD, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

J. Bedford.

1651. *By Prisoner.*] WERE you at Golden Grove, in October last year, with Lieutenant Adcock, during martial law?—Yes.

1652. Were you on the detatchment with Lieutenant Adcock, and Captain Astwood, and others, on the march, on Sunday, 22nd October last year, from Golden Grove, past the Post Office, towards the Iron Bridge, and afterwards on towards Amity Hall Estate, in St. Thomas'-in-the-East?—Yes.

1653. Did you see or speak to any person at the Post Office that same Sunday morning?—I saw a person, and I borrowed a saddle from the man at the Post Office.

1654. Did you, after you past the Post Office, at first go over the Iron Bridge, or did you go at first straight on the main road towards Holland Bay?—I went straight on the road towards Holland Bay at first.

1655. About how far did you go on that wrong road towards Holland Bay, from the Iron Bridge?—Between 200 and 300 yards.

1656. Did you see, or hear of, any three dead bodies while you were, on that Sunday morning, on the main road by the Post Office, or on the wrong road that you at first took towards Holland Bay?—No.

1657. Did any other soldiers go the wrong road with you that same Sunday morning?—Yes.

1658. About how far on the road over the Iron Bridge had the main body gone, when you turned back from the Holland Bay-road and saw the troop that Sunday morning?—They had nearly got to the first village; I do not know the name of the village.

1659. Did you see if any house at that village had been, or was about to be, set fire to when you rejoined the main body?—Yes; they were setting fire to it when we got up to them.

1660. Were you censured by Lieutenant Adcock when you rejoined the main body, for straggling, that Sunday morning?—Yes.

1661. *By Prosecutor.*] At what hour of the day did you leave Golden Grove Estate?—I cannot tell the hour, but it was an early hour.

1662. Did you leave alone, or with whom?—I left with the mounted volunteers, the Kingston volunteers, and some foot volunteers.

1663. At what hour of the day did you get to the Post Office?—Betwixt the hours of 8 and 9 a.m.

1664. Were you walking, or riding, when you left Golden Grove Estate?—Riding.

1665. Who was with you when you arrived at the Post Office?—The whole of the volunteers, and eight of our own men, the 6th Regiment, including myself in the eight.

1666. Were you told, or did you know, before you left Golden Grove Estate, the place you were to go to, or the road you were to take; did you hear of the Iron Bridge?—I heard Cap-

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tain Astwood say they were going to the Iron Bridge and the Duckenfield Estate.

1667. Was there an advance guard when you you left Golden Grove Estate, and did it keep in advance until you reached the Post Office?—There was an advance guard, and it kept in front until we got to the Post Office.

1668. Were you with, or how far behind, the advance guard; could you see or hear it all the way?—I was; it might be 200 yards behind, or perhaps more. We could not hear it, but we could see it sometimes, and sometimes we could not.

1669. Were you then with the main body?—Some part of the time.

1670. Where was the main body when you were not with it?—A little in front of us.

1671. Did you overtake the main body before you got to the Post Office, or was it still a little in front of you when you arrived there?—We were with the main body when they arrived at the Post Office.

1672. What officers were with the main body?—Lieutenant Adcock; there was no other military officer but a volunteer officer; Captain Astwood was there.

1673. Did you stay for any time at all at the Post Office?—A few minutes, while I changed saddles.

1674. Was that when you borrowed the saddle of the man at the Post Office?—Yes.

1675. Did the main body remain the few minutes, or did they go on, and you follow?—They remained there a few minutes, and we remained a few minutes.

1676. Then did you all go off together?—No.

1677. Who went first?—We went first, that is, the two men who were with me all along.

1678. Did you see the Iron Bridge when you got to the Post Office?—Yes.

1679. Had anybody taken a wrong road before you did, and had they returned into the right road?—I cannot say.

1680. Did you take the wrong road before you got to the Post Office, or after you passed the Post Office?—After we passed the Post Office.

1681. You have said that you heard, before you left Golden Grove, that you were to go to the Iron Bridge, and that you saw the Bridge when you arrived at the Post Office; you have also said that you left before the main body, why then did you not go to the bridge, or why did you not ask about the road you were to take?—We had a race down that road, that is, the three of us, Private Barnes and Cox. We thought to be back before the party started, but when we got back they had gone.

1682. Then you did not, as you have said, take a wrong road, but you, for your own amusement, and while your commanding officer was present, raced down the road which you say leads to Holland Bay?—Yes.

[The Witness withdraws.

Twenty-fifth Witness for Defence.

JOHN ROBSON WATSON, Sub-Collector of Customs at Port Antonio, being duly sworn, is questioned by the Prisoner.

J.R.Watson.

1683. *By Prisoner.*] WERE you on the march with Captain Adcock, of the 6th Regiment, from Golden Grove, past the Post Office, by the Iron Bridge, and then on afterwards to Amity Hall Estate, on Sunday, 22nd October, last year?—I was.

1684. What rank did you hold in the force on that Sunday morning; were you in front, or the rear, and with whom?—I was a private in the Kingston Volunteer Troop, under Captain Astwood, the right-hand man of the leading files, with Trooper Allen.

1685. Have you seen, this morning, in these barracks, some soldiers of the 6th Regiment, who were here this morning to give evidence; if so, did you recognise them as men who were with Captain Adcock's troop, on the morning of the Sunday that you also were with it, near the Post Office by the Iron Bridge?—I recognised some men of the 6th Royals here this morning; to the best of my recollection, they were in the column that morning.

1686. Have you recently been on the Holland Bay-road, near the Iron Bridge, and the bamboo rail on that road?—Yes, I was there on Thursday morning last.

1687. On that same Sunday morning did you first go over the Iron Bridge, or where else did you first go?—We first went down the Holland Bay-road.

1688. About how far did you go on this wrong road towards Holland Bay?—I should say fully 250 yards, reckoning from abreast of the Iron Bridge.

1689. Did you, on that Sunday morning, on the main road, near the Iron Bridge, or on the wrong road which you took towards Holland Bay, see or hear of any three dead bodies?—I did not.

1690. At the time when you rode by the Holland Bay-road on the Sunday morning, and when you last went there, did you take notice of a bamboo fence in the logwood hedge on that Holland Bay-road?—I did, on both occasions.

1691. Were there, on that Sunday morning when you rode by, any dead bodies, near to, or tied to, or lying by that bamboo rail fence in the logwood hedge?—There were not.

1692. About what time on that Sunday morning must you have been at the bamboo rail fence?—About 7 a.m.; it might have been a quarter to, or a quarter after, but about 7.

1693. Are you the son of the Rev. James Watson, a Presbyterian minister in Kingston?—I am.

1694. About what distance is the bamboo rail from a point abreast the Iron Bridge, on the Golden Grove side of the river?—About 150 to 200 yards, I should say.

1695. Did you on that Sunday morning see any persons digging graves near by that bamboo rail on the Holland Bay-road, or did you meet any persons with shovels and hoes, or did you see any crows, or smell any dead bodies, about this bamboo rail?—I met nobody there that morning with shovels, nor did I see any crows, nor smell any dead bodies.

1696. Can you, by personal examination when you

you were last on this road, tell the Court whether or not a person standing nearly opposite the Golden Grove end of the Iron Bridge, can see the bamboo rail fence in the logwood hedge, on the road leading to Holland Bay?—From personal observation I can say it is impossible, when standing at the abutment of the bridge on the Golden Grove side.

1697. *By Prosecutor.*] With whom do you say you rode from Golden Grove to the Post Office; state all in whose company you went?—With a detachment of the Kingston Volunteer Troop, to which I was attached; with a detachment of the 6th Royals, stationed at Newcastle; with a company of Irregular Volunteers, under the command of Captain Ford.

1698. Did you all arrive at the Post Office together?—We did.

1699. Was there any advanced guard?—Not properly any advanced guard; there were two troopers riding in front, about 20 or 30 yards in front.

1700. Who were they?—From evidence taken before this Court, I know; but of my own personal knowledge I do not.

1701. Do you happen to know if they took the wrong road?—I do not know.

1702. Had you heard, before leaving Golden Grove, what course your were to take from the time of leaving until your return?—I had heard, on leaving Golden Grove, we were to go in the direction of the Iron Bridge, but I had heard no more of the route.

1703. Did you alone take the wrong road, that is, were you alone, when, as you say, you took it?—I was not alone. I was accompanied by the left-hand man of the leading file, as also by the two next succeeding files.

1704. Do you know the names of any of these men; if so, state them?—Trooper Allen was riding on my left. Ensign Brass was riding beside me, as an officer attached to our company. I do not know the names of any of the others. I beg to amend this reply, by adding that Trooper Lofthouse was riding in front of the leading files; he was acting as bugler to the whole column. *J.R. Watson.* 19 Nov. 1866.

1705. Did you all return into the right road together?—We did not. Those of us who had gone a good way down the Holland Bay-road, on being ordered back to the bridge, found that the column was in the act of passing over the bridge, and were ordered to remain there till it had got over. We were then ordered to retake our places in the front.

1706. Did you then return from the wrong road by order, and by whom was it given?—Mr. Harrison of Hordley Estate came down with orders from Lieutenant Adcock, telling us that we were to rejoin the column.

1707. Did you all obey the order together and return together?—We did not; the first and second files had got separated a little, and as the latter first received the order, they turned and went back a little before us; it was almost coming back together.

1708. Who was in front when the order to return was given?—Trooper Allen and myself.

1709. Were the other two close behind?—Pretty close.

The President directs the Court to be cleared for deliberation.

The Court is re-opened, and the Witness questioned.

1710. *By Court.*] Were you still going along the Holland Bay-road when Mr. Harrison brought you the order; and how close did he come to you?—We were still going along the Holland Bay-road. As far as I can recollect, he came close to us.

1711. Did Ensign Brass, Bugler Lofthouse, Trooper Allen, and you, return together to the Iron Bridge, on receiving the order to turn back?—We did.

[The Witness withdraws.

Twenty-sixth Witness for Defence.

No. 755, Private *William Barnes*, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

1712. *By Prisoner.*] WERE you one of the men of Captain Adcock's troop who went from Golden Grove past the Post Office to the Iron Bridge, and afterwards on to Amity Hall with Corporal Bedford?—Yes. *W. Barnes.*

1713. Did you go past the Post Office, directly over the Iron Bridge at first, or did you go anywhere else first, on that Sunday morning, before you went over the Iron Bridge?—I stopped at the Post Office; and I went on the same road, straight ahead.

1714. After you left the Post Office, did you go straight ahead with any other soldier?—Yes, I went with two more. Private Cox and Lance Corporal Bedford of the 2nd Battalion 6th Regiment.

1715. About how far did you go straight ahead on this road with Bedford and Cox?—About 200 or 300 yards.

1716. At or near that road straight ahead, did you see or hear of any dead bodies that same Sunday morning?—No.

1717. Did you, on that road, straight ahead, take notice of a bamboo rail fence, or of some bamboos, on that Sunday morning?—Yes; there was on the right-hand side a bamboo fence.

1718. Did you see any dead bodies at or near that same bamboo fence on that same Sunday morning?—No.

1719. Did you rejoin the main body afterwards; if so, were you and others reprimanded by Lieutenant Adcock for straggling that Sunday morning?—I did rejoin the main body and we were reprimanded by Mr. Adcock.

1720. On that Sunday morning, did you see anybody on the road with shovels, hoes, or other digging implements, any where near this same road that you went straight on, or on the road towards Amity Hall Estate?—No.

1721. *By Prosecutor.*] Did you know, before leaving Golden Grove, where you, that is, the party of which you were one, were to go?—Yes; I knew we were to go over the Iron Bridge.

1722. How did you come to go past the place, which you knew you were to go to, or over?—Because three of the men stopped behind at the Post Office to get a saddle changed. The three

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of us then gallopped our horses on the road, while the troop was gone ahead before us.

1723. Was that how you came to go the wrong road?—Yes.

1724. Did the detachment go on before you changed the saddle?—Yes, they went past me.

1725. How long after the detachment went past, was it that the saddle was changed, and the three of you ready to go on?—I could not say; but about two or three minutes.

1726. Had you lost sight of your detachment before you were ready to start; that is had it gone too far onward for you to see any of them?—No, I did not lose sight of them.

1727. Then why did you not go on and join them?—We gallopped past the Iron Bridge, and then, when we had got to a certain distance, we turned right about, and gallopped over the bridge after them.

1728. Did you mistake the road in gallopping past the Iron Bridge?—No; I kept straight ahead past the Iron Bridge.

1729. Do you mean that on coming from Golden Grove you gallopped past the Iron Bridge without stopping?—Yes.

1730. Then did you change the saddle after you came back to the Post Office?—No; we changed the saddle before we left Golden Grove to go to the Iron Bridge.

Witness on hearing this read over, states that it is not his meaning; but that the saddle was changed going along the road to the Iron Bridge.

1731. At which part of the road did you change the saddle?—On the right-hand side, at the Post Office.

1732. What do you mean by changing the saddle?—Bedford changed the saddle; he got another saddle at the Post Office, because his own had no stirrups.

1733. Then was it as you gallopped past the Post Office that you saw the detachment going onwards over the Iron Bridge?—We went to the Post Office together; then I stopped, and they went past me.

It being now 4 p.m. the Court adjourns till 10 a.m. to-morrow, 20th instant.

Twenty-eighth Day, 20th November 1866.

On Tuesday, the 20th of November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as yesterday.

The Prosecutor intimates that he does not intend to continue the cross-examination of Private Barnes, and the Prisoner also declines re-examination.

Twenty-seventh Witness for Defence.

No. 22, Private James Cox, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

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1734. *By Prisoner.*] Were you on the detachment with Captain Adcock, on the road from Golden Grove past the Post Office, on towards the Iron Bridge, and thence to Amity Hall, on Sunday, 22nd October, last year?—I was on the detachment with Captain Adcock, and I went as far as the Post Office on that day.

1735. With what other soldiers of the 6th Regiment were you on that day, on this march?—I was with two others: Private Barnes and Corporal Bedford, as he now is.

1736. After you left the Post Office, did you, with them, go over the Iron Bridge at first, or elsewhere at first?—Elsewhere at first; on the Holland Bay-road, I think it is; it runs straight on from the Post Office.

1737. About how far on this Holland Bay-road did you go with the two other soldiers, on this Sunday morning?—Between 200 and 300 yards, counting from the Post Office.

1738. On the wrong road, which you took with the other two men of the 6th Regiment, did you see any three dead bodies near the roadside, or by a fence?—No.

1739. Did you see any bamboos on the wrong road which you went?—I saw a bamboo fence on the left-hand side.

1740. Was that the left-hand side as you first went on the wrong road, or as you returned from it?—As I returned, I believe.

1741. Did you see any three dead bodies tied to, or near that bamboo fence, which you saw that morning?—I did not.

1742. When you returned from the wrong road and got back to the Iron Bridge, about how far off did you see the main body under Captain Adcock?—They were some 500 or 600 yards in front.

1743. Did you, on your return, get reprimanded by Captain Adcock for straggling?—I did.

1744. Did you see any eight or nine persons on the road that morning, with hoes or shovels, or other digging implements, that Sunday morning?—I did not.

1745. *By Prosecutor.*] Was the bamboo fence which you say you saw all along the road from the Post Office to the place at which you turned back?—The bamboo fence extended all along the road, as far as I went, with the exception of 20 or 30 yards.

1746. Was the 20 or 30 yards, nearest to, or farthest from the Post Office?—Nearest to the Post Office.

1747. Was it on both, or one, or which side of the road?—The bamboo fence was on my right-hand side, at the time I mean, returning to the Post Office.

1748. You have said in your examination in chief

chief that the bamboo fence was, you believed, on your left hand in returning to the post office, and again in your cross-examination, that it was on your right hand in returning to the post office; which is right?—The right-hand side of the road as I was returning.

1749. Did you see any bamboo fence on the left-hand side as you were returning?—There was a fence, but I could not state what it was, whether bamboo or not.

1750. How high was the bamboo fence on the right-hand side, as you were returning, which you say you saw?—Six or seven foot according to my calculation. *J. Cox.* 20 Nov. 1866.

1751. Did you walk or ride from Golden Grove to the post office?—I rode all the way.

1752. At what hour of the day did you arrive at the post office on that Sunday?—Between the hours of eight and nine a.m.

1753. *By Prisoner.*] Were the bamboos you saw on the right hand, as you returned, growing bamboos, or what else?—They were railing bamboos some, and some growing.

[The Witness withdraws.

Twenty-eighth Witness for Defence.

Lieutenant R. F. Ballantine, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

1754. *By Prisoner.*] Can you give the Court your opinion as to the general character of Ensign Cullen as an officer and a gentleman?—I can. During the 18 months I have known Mr. Cullen I have always found him a perfect gentleman, and a most humane and kind-hearted man. *R. F. Ballantine.*

[The Witness withdraws.

Eighth Witness for Defence re-called.

Joseph Wood, Book-keeper on Amity Hall Estate, is re-called; and, with the sanction of the Court, is questioned by the Prisoner on his former oath.

1755. *By Prisoner.*] Do you know Harriett Warren; has she a husband?—I do know her; she is living with Thomas Wright, the headman on Amity Hall Estate. *J. Wood.*

1756. Can the person with whom she is living read or write?—To the best of my knowledge he cannot write.

1757. *By Court.*] Was Harriett Warren living with Wright before and during martial law?—I believe she was; I know she was.

[The Witness withdraws.

Twenty-ninth Witness for Defence.

Thomas Manners, Surgeon, of St. Dorothy's, Coroner and Magistrate for the same District, being duly sworn, is questioned by the Prisoner.

1758. *By Prisoner.*] Were you once stationed in St. Thomas-in-the-East, and did you go often to the Duckenfield Estate?—I was stationed at Port Antonio, I being then in the service, and I used to go to Manchioneal and to the Duckenfield Estate; it was the cholera time, and I used to travel about a good deal. This refers to 1850 and part of 1851. *T. Manners.*

1759. Do you know the neighbourhood of Duckenfield Estate, the bridge and grass piece, near there?—I recollect a grass piece near Duckenfield Estate.

1760. Do you know what that grass piece was considered to be, or for what it was used, in your time?—It was used as a burial-ground for people who died of cholera.

1761. Can you tell the Court of the habit of burying two or more bodies in one grave, without coffins?—During the epidemic of cholera I have known three, four, and as many as a dozen bodies put in together in the same hole, without coffins.

1762. Have you made a searching examination of certain bones now lying in these barracks, as the bodies of men the subject of this inquiry?—I have made a minute examination of some bones, now lying in the engine-house, in these barracks.

1763. Have you or not found amongst the bones produced more bones than would amply suffice for three dead bodies?—I have.

1764. Having examined the bones produced as the bones of the three men, the subject of this inquiry, will you state your opinion whether those bones have been in the earth only 11 months and four days, or that they must have been in the ground for a longer period of time?—Most decidedly they have been in for a longer period of time, I should say four years, or perhaps more.

1765. Do all the bones produced to make up each of the three bodies, for each person, appear to be, as regards the bones of each of the same age, for the same body?—The bones lying, I think they are, on the middle table, are evidently those of a young person, with the exception of the femurs or thigh-bones, which do not correspond with that skeleton at all. I wish also to make a remark as to the peculiarity of the pelvis of this skeleton, which on first examination I took to be that of a female, but on a further examination I found it to be that of a young male.

1766. Having seen some holes in two of the skulls produced, can you positively state whether they must have been inflicted before death; or do you rather think they present appearances of being inflicted after death?—I am certainly of opinion that they were inflicted after death.

1767. Having regard to the position of the marks on these two skulls, are you of opinion or not, that they must have been inflicted by a person standing on a level with the bodies, at 11

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or 12 paces directly opposite, or by a person who must have stood higher than, or over the bodies?—With regard to one skull, certainly it could not have been done by a person standing opposite, it must have been done by a person standing over.

1768. Suppose any person stood near to the grave, and with the skull well exposed, and fired at the skull in the grave, would the marks you have noticed present an appearance similar?—In one skull they would.

1769. Beyond the injuries on the two skulls, are there any such bones of the rest of the three bodies broken, as you might fairly expect from shots fired at 11 or 12 paces by several men, say from three to 10?—I do not think it; I did not see any bones broken by gun-shot wounds, beyond what I have mentioned, in the skulls.

1770. Could the fractures which appear on the two skulls, have, in your opinion, been produced by other means than a conical ball?—One, I think, has been produced by a pickaxe, or what the negroes call a digger; either by pickaxe or digger.

1771. Have you, or not, based your opinion, expressed in this Court, on the test of actual experience, as well as on your past and present surgical knowledge?—Certainly.

1772. Is that fracture on the one skull which you say is produced by a pickaxe or a digger, the one skull with the large hole about the front part of the head?—No; the one that I mean has the hole at the back part, as far as my memory serves me at present.

1773. In ordinary experience, does not an Enfield rifle ball make a hole almost as small as itself at the point of entrance?—It makes a hole at entrance the exact size of itself; this is within my own experience; I had a case the other day.

1774. *By Prosecutor.*] When did you enter the army, and when did you leave it; what was your rank?—I entered the army in 1848 as an assistant surgeon on the staff; I left in 1858.

1775. When did you go to Port Antonio, and where were the troops you were attending stationed?—I went to Port Antonio in the month of May 1850, and I left in 1852. The troops I was attending were in the barracks at Port Antonio.

1776. How far is Port Antonio from the Duckenfield Estate?—I cannot tell you at this moment, it is so many years since I was there.

1777. During the prevalence of cholera how often were you able to leave the troops at Port Antonio, and go and see burials at the Duckenfield grass piece?—I did not state that I saw burials in that grass piece, though I knew it was used for that purpose; at that time my orders from General Bunbury were to afford medical assistance all round the country wherever it was required, as far as I could go; and I used to go as far as 30, and even 40 miles, sometimes.

1778. Did you ever see a body buried in the Duckenfield grass piece?—No.

1779. How then do you know that the place was used as a cholera burial-ground, or as a burial-ground at all?—On my visits there people pointed it out to me as the burial-ground of cholera patients.

1780. You have said that you made a very careful examination of the bones now lying in the engine-room in these barracks, and that there are more bones than would amply suffice for three dead bodies; enumerate the bones which are in excess?—The three bones belonging to the scapula or shoulder blade.

1781. How many of these bones (scapula or shoulder blade) do you find there altogether?—The two broken up, belonging to one skeleton, and four more belonging to the other two skeletons, making in all six.

1782. How many ought there to be, supposing you have the skeletons of three bodies?—There ought to be six.

1783. Then what are the bones which you say are in excess; what are they called in anatomy?—There are two corocoid, and one acromion processes.

1784. How many of these bones ought there to be in three skeletons?—There ought to be 18 processes in three skeletons; that is, three processes to each scapula.

1785. How many do you find in all among the bones in the engine-room?—There are in all 21 processes; that is, six complete scapulæ and three processes not belonging to any skeleton.

1786. Are there any other bones in excess; if so, state their anatomical names?—Not that I am aware of.

1787. Then in all other respects do you find that the bones make up three male skeletons?—In all other respects they do.

1788. What is the peculiarity of the bone which you say does not agree with the others of that skeleton to which it is affixed; and is it larger or smaller?—It is that of a person older in life than the rest of the bones; the femurs, which are the bones differing from the others, appear to belong to a person of about 30 years of age, or at all events above 25, while the pelvis and humeri seem to be those of a person of 21 years of age.

1789. Did you observe any brainy matter, or marks of it, about any of the bones?—Not the slightest vestige of it.

1790. By what are bones kept together at the joints, either in life or after death; what do you call the adhesive property?—Ligaments.

1791. Had all traces of these ligaments passed away; were none of the bones still adhering together by the joints?—They were all loose and scattered when I saw them; I did not see a ligament.

1792. You say that, in your opinion, the bones which you have examined must have been at least four years in the ground; on what do you found this opinion?—From my own experience in exhuming bodies, and from my own experience as an anatomist.

1793. Can you not establish your opinion by anything further than what you have said; have you nothing further to add as your reason for your opinion?—I may add that the bones are utterly devoid of animal matter, while if they had been only 12 months in the ground they would have been heavy and have presented an entirely different appearance; the ligaments would have been there; the attachments of the muscles would have been seen, as also the brain.

1794. Is the process of decomposition then invariable, or does it depend upon any and what conditions for the presentation of very different stages?—My opinion is that decomposition is not ended for, say, two years; I have seen cases where decomposition has not ended in that time; I speak of bodies buried without coffins, and to a depth varying from one foot and a-half to four feet, and with quick lime.

1795. What

1795. What effect has quick lime on dead bodies?—There is a supposition that it quickens decomposition, but I am not of that opinion.

1796. Do you think, founded on your experience, that a body buried without a coffin, 19 inches under the surface, in this climate, in a damp soil, or near the banks of a river, without any quick lime, could not decompose and leave nothing but bones in 12 months?—Certainly not.

1797. When did you first see these bones?—I saw them first yesterday week.

1798. *By Prisoner.*] You say decomposition is not ended for at least two years; are you aware that bones in France are not allowed to be exhumed till the lapse of five years; and in England, not until the lapse of 11 or 14 years from old cemeteries and burial grounds, so that all smell of decomposition might pass away?—I am aware of that; even longer; in Paris I think it is 12 years.

1799. You speak of decomposition going on for two years; was there any offensive smell at all from these bones produced; was there offensive smell from those you saw as being exhumed from the ground only after 12 months' burial, from your actual experience?—There was no smell from these bones at all; they were void of smell; that is, those bones of the three skeletons. From my own experience of those exhumed after 12 months, there is a strong odour.

1800. You say there were no brains on the bones produced as of the three persons, the subject of this inquiry; were there vestiges or quantities of brainy matter about some skulls of bodies buried about 12 months ago, that is, in October 1865, and can you produce some to the Court, the same as formed the subject of your actual experience?—There were vestiges of brainy matter on skulls buried 12 months ago, within my own experience; I could produce some of the brainy matter which I removed from the skull of a body which had been buried on 26th of October 1865.

1801. Did you take out those brains of the skull you speak of, as buried on the 26th October 1865, in the presence of Dr. Allen, of the lunatic asylum, yesterday morning?—Yes, in his presence.

1802. You were cross-examined as to what you found on the bones produced. On the bones produced did you find any perceptible amount of clothing; what was the case with regard to the person buried on the 26th October 1865, in respect of clothing?—With respect to the three skeletons which I examined in these barracks, there was a small piece of cloth, about three inches long, adhering to one of the ribs. The clothing of the person alluded to as buried on 26th October 1865, was in very good order: the waistband of his trousers was in very good order, and the red paint on his convict clothing was very distinct. *T. Manners.* 20 Nov. 1866.

The President orders the court to be cleared for deliberation.

The court is re-opened, and the prosecutor informed that, as fresh matter has been introduced in the last four questions, not arising out of cross-examination, the Court will put any question on the subject which he may be desirous of urging.

The Prosecutor declines to avail himself of this offer.

1803. *By Court.*] Describe the grass-piece which you state was used at Duckenfield for burials, during cholera?—I merely have a recollection of a grass-piece, but as I have not been there for so long a time, since 1852, I am unable to describe its situation. It was pointed out to me then, and I have since forgotten all about it.

1804. Which is the skull which, in your opinion, has been injured by a person standing above?—

The three skulls being produced in Court, the Witness points out the centre one, that marked No. 3.

1805. Which is the skull which you state, if fired at in the grave, would present, as regards injuries, the appearance which it now has?—I think it is the same skull, that marked No. 3.

1806. Which is the skull which you consider was injured either by a pick or a digger?—As far as I remember, it is the same skull, No. 3.

1807. Point out the three processes which you state are in excess of the bones of the three skeletons?—

The Witness points them out, as requested; three small pieces of bone; the Court having proceeded, for the purpose, to the engine-house in the barracks, where the bones were laid out.

1808. Point out the thigh bones which you state appear to belong to a person above 25 years of age?—

The Witness points them out, and explains that the epiphysis of the pelvis and of the humeri of the skeleton in question is not completely joined or set, as this process does not take place until a person has reached 21 to 25 years of age; whereas in the femurs or thigh-bones said to belong to the same skeleton, the epiphysis is fully joined,

It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, 21st instant.

Twenty-ninth Day, 21st November 1866.

On Wednesday, the 21st of November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday; and the questioning of the last Witness, Dr. Manners, by the Court, is proceeded with. *T. Manners.* 21 Nov. 1866.

1809. *By Court.*] On what grounds do you base your opinion that the holes in two of the skulls were inflicted after death?—From experiments that I have made myself on skulls, which

experiments correspond with the opinions expressed by Tevan, a recent writer on gunshot wounds. In gunshot wounds made in a skull, after death, the aperture made by the entry of the bullet

T. Manners. 21 Nov. 1866.

bullet is always larger than it would be in the case of a skull of a living person, and the fissures are also greater; more cracks round the hole, and the sutures opening more.

1810. What experience have you had as to wounds made upon the skulls of living subjects by the Enfield rifle?—I have seen cases when I was in the service, of wounds by the conical bullet: and in private practice I have since had one or two cases; I mean skull wounds.

Witness requests that his reply to Question 1783 may be corrected, and stand thus: "One corocoid and two acromion processes;" also that his reply to Question 1784 may be altered, and to stand, "12 processes in three skeletons; that is, two processes to each scapula;" also that in reply to Question 1785, "15" should be substituted for "21."

[The Witness withdraws.

Thirtieth Witness for Defence.

Staff Surgeon STREET, M.D., is re-called, and questioned by the Prisoner on his former Oath.

Staff Surgeon *Street*, M.D.

1811. *By Prisoner.*] HAVE you examined the bones produced, as the bones of three men, the subject of this inquiry, the bones which are now lying in these barracks?—Yes.

1812. Did you discover any brains or any animal matter about them?—No.

1813. Do all the bones produced to make up each body for the same person appear in each body for itself to be of the self-same ages; or are some of the bones of the one body older than some of the bones of that same body?—Some of them have the appearance of being older; some of the bones appear to have been longer interred than others; and there are two of the scapula which are put down as belonging to the same body, one of which seems to be larger than the other. By the word "older," I mean to imply my opinion that some of the bones seem to have been longer under ground than others. This applies to one skeleton. Two of the femurs appear not to have been so long interred as the other bones.

1814. Are you of opinion that the bones produced were in the ground only for 11 months and four days, or are you of opinion that they must have been in the ground for a longer period than a twelvemonth?—They have the appearance to me of having been longer.

1815. With regard to the position of the injuries on two of the skulls, are you of opinion that they must have been inflicted by a person standing on a level with the bodies, directly opposite; or rather that they may probably have been inflicted by a person standing high over or above the persons shot at; as, for instance, shot at on the ground?—

The Prosecutor objects to this question, as being too leading. The Prisoner thereupon requests permission to amend it, and substitutes the following:

Amended Question.] Looking at the position of the injuries on the two skulls produced, how do you think the person shooting at them must have stood, and how do you think the bodies shot at must have been relatively?—I have not as yet given evidence that they were gun-shot wounds; but assuming that they were gun-shot wounds, I do not think they could have been inflicted by a person opposite them. One of the skulls I am doubtful about, judging from the point of entrance and the mode of exit. (*The Witness points out the skull marked No.* 3, *and explains his reasons for feeling doubtful as to what the hole in the skull had been caused by.*) In the other skull, marked No. 1, and which had been very much fractured, I cannot account for the extensive nature of the fractures, nor for the large size of the hole at the point of entry, except on the supposition that the person firing had stood very close to the body shot at. As far as my experience goes, skulls may be fractured to the extent that this one has been, in cases of suicide, where a pistol, for instance, has been held close to the head; but rarely, I think, by a rifle ball at any distance, unless very close indeed.

1816. Could the injuries you have seen on two of the skulls produced, have been caused by other means than a conical ball?—I believe they might, but I am not prepared to answer that with any certainty; this refers to the skulls marked Nos. 1 and 3.

1817. Do you consider that shots fired at 11 or 12 paces, on a level, by, say, from three to ten men, at the bodies of the bones produced, would have done the amount of mischief which appears to have been produced on the two skulls, with all the sutures separated or loosened, and with other appearances visible on them?—No, I do not.

1818. At the time when you first saw the bones produced, as the bones of men, the subject of this inquiry, had they any ligaments or perceptible clothing, or hair on the head or the pubes, or any offensive smell?—No, not that I saw, that applies to ligaments, hair, and clothing; nor was there any perceptible smell.

1819. At the time you first saw the bones in question, were all the skulls and the remainder of the bones in pieces. When first did you see them?—No, they were not in pieces when I first saw them. I am unable to say when this occurred, further than that it was about three weeks or a month ago; I cannot specify the date at all, but it was shortly after this Court began its sittings. I did not see the bones till after they had been put together.

1820. *By Prosecutor.*] Have you yourself fitted up the three skeletons, and taken the trouble of selecting and matching the bones?—I have not done it altogether myself but I have been present, and assisted with others.

1821. At what place did you first see the bones?—In the engine-house, in these barracks.

1822. What is your reason for saying that two of the bones appear to have been longer buried than the rest?—From their colour, and from their general appearance.

1823. Does that observation apply to all the bones of any one skeleton, or only to the two bones which you have named of one of the skeletons?—More particularly to those two bones.

1824. In view of the climate of this country, would you undertake to say, for a certainty, that a body buried without a coffin, 19 inches below the surface, in a damp soil, could not decompose completely

completely within 12 months?—I could not say so, with any certainty.

[The Witness withdraws.

At this stage, and about 11.40 a.m., one of the members of the Court, Captain Seton, 102nd Regiment, was seized with an epileptic attack.

The Court therefore adjourned till 11 a.m. to-morrow, 22nd inst.

Staff Surgeon *Street*, M.D.

21 Nov. 1866.

Thirtieth Day, 22nd November 1866.

On Thursday, the 22nd November 1866, at 11 a.m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday.

Thirty-first Witness for Defence.

The Defence is proceeded with, and Staff Assistant Surgeon Henry Morris, being duly sworn, is questioned by the Prisoner, after being duly cautioned by the Deputy Judge Advocate that he, the Witness, being himself a prisoner awaiting trial, on a charge similar to that on which the Prisoner is arraigned, should not attempt to reply to any question which might have a tendency to prejudice his own case.

H. Morris.

22 Nov. 1866.

1825. *By Prisoner.*] Are you the medical officer who marched with Ensign Cullen on the detachment, on the 21st October 1865, from Manchioneal to Golden Grove?—I am.

1826. Will you tell the Court, as well as you can, in what state you were before you reached the Iron Bridge, and when you reached the post-office, on that day?—I was suffering from sun-stroke, and nearly insensible.

1827. Did you on that day, at the post-office or Iron Bridge, give any order to any soldier to shoot any three prisoners, or any prisoners at all, or take part in any shooting on that day, to your knowledge or belief?—I did not.

1828. During the time you were at the post-office that day, did you see any three prisoners brought for any purpose by any persons, or constables, or book-keeper, to the best of your knowledge or belief?—I did not.

1829. To the best of your knowledge and belief, did you move out of the building from the time you arrived there till the time you left it?—I was incapable of doing so, and it was with great difficulty I left it when I did; and then I got up under the belief that Mr. Cullen had got a cart for me, which he endeavoured to procure for me.

1830. Were you present at the exhumation of the Rev. Mr. Herschell, the same gentleman who was killed in Morant Bay during martial law; and did you see the depth of his grave, and the state of his remains?—I was present, and saw him exhumed, and the state of his remains; the depth of his grave was from 15 to 18 inches, and he was lying on his face. The first thing we came upon was a shirt; we then tried to lift the body, to ascertain if it were Mr. Herschell, but we could not do so, on account of the stench; the negroes then refused to lift it. An officer of Her Majesty's gunboat "Nettle," and Mr. Orgill, then raised it themselves. The hair covered the scalp, and one long whisker hung to the face; I did not see two. The brother-in-law, Mr. Orgill, then removed a black stud from the shirt-front, which was perfect; he also had on his drawers, which were stained with blood; the blood-marks remaining. This was in August last; the actual date I cannot give. The body, when we lifted it into the coffin, hung together; we lifted it on two sticks. The body was not in a coffin.

1831. To the best of your knowledge, were any prisoners shot that day with the knowledge or sanction of Ensign Cullen, at or near the post-office?—No, or I should have known it.

1832. Do you know when Mr. Herschell was buried; tell the date?—I buried him myself on the 11th October last year, at day-break. The 12th October I should say, instead of the 11th. The first parties were buried on the 11th.

1833. Have you seen the exhumation and some of the remains of a certain body of a man said to be hung during martial law, and buried on 26th October 1865. When was it exhumed, and did you show the remains to Drs. Bowerbank, Manners, and others; in what state was that body when exhumed; state as accurately as you can?

The President directs the court to be cleared for deliberation.

The court is re-opened, and the Witness directed to reply to it.

The Prisoner, however, is informed that the question is considered of a very uncertain nature, and that a reply is sanctioned merely because the Court is desirous of affording every latitude to him in the conduct of his defence.

I have seen the exhumation of the body alluded to. I think it was exhumed on the 8th of this month. I showed it to the doctors named, as well as to all others who wished to see it. The pericranium was on the skull; hair perfect; periosteum on the upper extremities, also on the ribs; remains of ligaments present everywhere. On opening the skull the remains of the brain were found; there was an offensive smell on opening the grave; pubes covered with hair; a great deal of animal matter in the grave; in some cases two inches square; two finger nails present. The body was covered with lime, and I should say the whole of the clothing present; there was also a rope round the vertebra of the neck, and a great deal of fascia on the ilium, fascia being the covering matter of the muscles; it is a thick, dense structure, keeping the muscles in their place and the limbs in form.

1834. Have

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1834. Have you seen the bones said to be the bodies of the three men, the subject of this inquiry; how did they appear when you first saw them; what their different state, if any, of those?—I saw them for a few minutes; several bones are wanting; more than 100 to complete three skeletons; some adult bones were placed with others, to the ends of which the epiphyses were scarcely united, thereby not belonging to the same body.

1835. At what military hospital did you study?—Netley.

1836. Have you studied the effect of gun-shot wounds under experienced surgeons?—Under one of our most experienced surgeons on gunshot wounds, Dr. Longmore.

1837. Have you seen the injuries on two of the skulls produced; could they, in your opinion, have been caused by other means than by a conical ball?—*Pointing to the skull marked No.* 1, the witness replies: "Most decidedly; if this man were shot by a ball at all, the man who fired must have been considerably above and to the right of the subject shot at; or, if the man had been on a hill above and looking down, and the person firing had been considerably below him and to his right, a nearly spent spherical ball might have created this amount of mischief. But, in my opinion, it was done by a shell; it has more the appearance of a shell wound, that is, the splinter of a shell, as I never before saw a skull so shattered by a bullet whilst the man was alive. With regard to the skull marked No. 3, it is simply smashed up; and after death, I should think, the injuries might have been done with anything, there being a point of entrance but none of exit.

1838. How long is it since you received your diploma as a surgeon?—Nearly eight years.

The Prosecutor intimates that under the circumstances officially known to the Court, he declines to exercise his right of cross-examining this Witness, and he requests that this may be noted on the proceedings.

The Court also abstains from putting any questions to the Witness.

Before withdrawing, the Witness requests permission to add to his evidence regarding the skull, marked No. 1, that the injury inflicted, if done by a bullet, appears more likely to have been done by a bullet shell.

[The Witness withdraws.

Thirty-second Witness for Defence.

Staff Surgeon JOHN DUNLOP, M.D., being duly sworn, is questioned by the Prisoner.

J. Dunlop, M.D.

1839. *By Prisoner.*] How long have you been a surgeon, and what experience have you had as a surgeon in the army in different countries?—I have been more than 18 years on full pay. I have served in India for nine years; in the Mediterranean and in the Crimea; and for the last year in the West Indies.

1840. Have you seen the bones produced as the bones of three men, the subject of this inquiry; the bones now lying in these barracks?—I have.

1841. Did you discover any brains whatever on any of those bones?—I did not.

1842. Do all the bones produced to make up each body, for the same person, appear in each body for itself, to be of the self same ages; or, are some of the bones of the one body older than some of the bones of that same body?—Some of the bones appear to have been interred before other bones of the same body; the ages of the bones I cannot speak to.

1843. Are you of opinion that those bones were in the ground only for 11 months and four days, or are you of opinion that they must have been in the ground for a longer period than a twelvemonth?—I am of opinion that they were in the ground for a longer period than a twelvemonth.

1844. Do you consider that shots fired at 11 or 12 paces on a level, by, say, from three to 10 men, at those bodies, would have done the amount of mischief produced on the two skulls, with all the sutures separated, and other appearances?—No; I do not suppose they would have done that amount of mischief on the two skulls.

1845. Look at these two skulls, Nos. 1 and 3, will you tell the Court if the injuries might, in your opinion and experience, have been produced by other means than a conical ball?—Yes; I conceive that in both cases the injuries might have been caused by another weapon than the conical ball.

1846. At the time when you first saw the bones produced, did you see any ligaments, or hair, or perceptible clothing, or animal matter, or did you perceive any offensive smell?—I saw the bones for the first time on the 30th October; they had no offensive smell. A small quantity of hair was observed on one cheek, or rather on the bone of one cheek. A very small portion of ligament was observed on one or two of the vertebræ. A small quantity of cotton clothing was observed sticking to one rib; this piece was about two inches in length, and about half-an-inch in width; it was of cotton. Bone never loses altogether its animal matter, at least not for a very long period; but there was no perceptible animal matter.

1847. *By Prosecutor.*] Do not heat, moisture, and exposure to the air, hasten decomposition in dead animal matter?—They do.

1848. If decomposition had commenced before the burial of a body, would it or not proceed the more rapidly after burial; and would not this rate of rapid decomposition under ground be determined by the extent to which it had already proceeded before burial?—Certainly; undoubtedly. For a time decomposition would proceed more rapidly under the circumstances stated.

1849. If a dead body were exposed to the air and sun for 17 or 18 hours in this climate before burial, must not decomposition have already been far advanced?—Yes, advanced to a certain extent; I cannot say far advanced.

1850. What would be the relative decomposing power of a gravelly soil and a clayey one; in which other things being the same, would a skeleton be sooner denuded of flesh?—In a clayey soil.

1851. Do

1851. Do you know the nature of the soil at Duckenfield and at Morant Bay respectively, or of either of those soils?—Respecting either of those soils, I cannot speak definitely.

1852. By what marks do you conclude that some of the bones were interred before others of them?—By the absence of animal matter, by their lightness, and by the worn appearance of some of their parts, and also by their dryness.

1853. Do you consider that any of the fractures in the skulls, Nos. 1 and 3, could have been caused by conical balls?—They might have been caused by conical balls.

1854. Suppose a man to have been shot and his head hanging down, could another shot fired at him hit him at the spot indicated as a shot mark in the skull, marked No. 1?—I must ask whether the man was tied up; whether his body was flexible? Assuming that the shoulders and head of the man were flexible, his head might have fallen into such a position as to have allowed a wound, similar to that in No. 1 skull, to have been produced.

1855. Does the appearance you have spoken of, as the ground of your opinion, that some of the bones were interred before the others apply to all the bones of any one skeleton, or only to some bones of each skeleton?—All the bones, I should say, appear, in my opinion, to have been buried upwards of a year; some of them for a longer period. My remark applies to some of the bones of each skeleton.

1856. Can you, without analysis, undertake to distinguish the relative proportion of cartilage, or any other animal substance, in different partially decayed bones?—Yes, with tolerable accuracy. I can distinguish between cartilage and bone, with tolerable accuracy, by sight.

1857. Would you undertake to speak with any certainty that a body buried in a grave 19 inches deep, without a coffin, in a damp soil, on or near to the banks of a river, could not become divested of flesh by decomposition within 12 months, in this climate?—I should say it was possible, quite possible; though not probable.

1858. Can you, without analysis, fix the ratio in which cartilage has disappeared from a decayed bone?—With certainty I cannot; though I have observed cartilage on skeletons exposed to the open air, for a period of one year and four months.

1859. *By Prisoner.*] If the injuries might have been caused by conical balls, in what relative positions would you expect the skulls to be, and the shooters to be at the same time, looking at the parts of the skulls where the injuries are; be so kind as to describe it, by placing yourself, if you can, in the position you believe to be in such case actually necessary?—With respect to No. 1 skull, if the head had been flexed, with the chin resting on the chest, and the centre of the head turned almost at right angles to a person standing opposite with a gun in his hand; then this wound might have been caused by a bullet discharged at him. (*The skull was placed in the position described by the witness, and after looking at it himself, he again describes it as with the chin resting on the chest and the head inclined towards the left.*) I mean the face would be inclined towards the left. As regards No. 3 skull, and assuming that the injury were done by a conical ball, I am of opinion that the shooters must have stood over or above the skull or head. Supposing the skull is placed in its natural position, upright, the direction of the bullet, supposing it to have been done by a bullet, must have been almost perpendicular, unless the body was completely doubled up in a position such as I now assume (by bending down in such a position that the head would be below the pelvis). Except under these circumstances, the injury to this skull could not have been inflicted by a bullet.

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1860. When you answered the question on cross-examination, as to a body buried near the banks of a river, did you understand that the body might be at least 200 yards off, on elevated ground which admitted of drainage by an adjacent road, in an open field, and that the river was deep below the banks?—No, I imagined that the river was much nearer than 200 yards; that possibly its dampness might be affected by the overflow of that river.

1861. *By Court.*] On the 30th October did you carefully examine the bones of the three skeletons now lying in these barracks; where did you examine them, and who was with you at the time?—I examined them in the engine-house of these barracks, and, to the best of my recollection, Assistant Surgeon Kerr was present all the time.

1862. Did you, on examination, find that the proper number of bones for three skeletons were there complete in all their parts, or were there any bones deficient, or any in excess?—There were several bones deficient; bones of the hand and wrist; several also of the ankle, instep, and foot; but the principal bones of the three skeletons were all present. There were none in excess as far as I could judge.

1863. Are you able to form any opinion from the appearance of the discoloration round the fracture of No. 3 skull, whether the injury was caused before or after death?—I am not able to give any distinct definite answer to that question.

[The Witness withdraws.

Thirty-third Witness for Defence.

Louis Juin Bowerbank, M. D., Fellow of the Royal College of Physicians and Custos of Kingston, being duly sworn, is questioned by the Prisoner.

1864. *By Prisoner.*] How long have you been practising in this Colony in the medical profession; has your practice made you acquainted with several parishes in the island?—I have practised for upwards of 30 years. I have visited several of the parishes.

1865. Can you tell the Court what you have known as to the custom of burying one or more bodies in the same grave, among the lower orders?—I can only state that during epidemics, such as cholera and small-pox, it was a very common practice among the lower orders to bury two or more bodies in the same grave, some with and some without coffins. I have known upwards of 90 bodies buried in one grave or large pit.

Dr. *Bowerbank.*

1866. Have you examined the remains produced as those of three men, the subject of this

Dr. *Bowerbank.* 22 Nov. 1866.

prosecution, and when first did you see them, with whom, and where?—I have examined them on several occasions during the last three weeks; that is to say, since the 31st October, which was the first time I saw them. On that day I saw them in the presence of Dr. Anderson, Dr. Campbell, Assistant Surgeon Kerr, and several other gentlemen, in the engine-room of these barracks.

1867. Did you make a minute and careful examination of these bones, and did you take a list or memorandum of what was produced before you?—I examined the bones carefully on 31st October; and on a second occasion, the 2nd of November, a list was made of all the bones on the table, or rather of all the remains on the table.

1868. Did you and other doctors, in the presence of Dr. Kerr, put up these two skulls, now produced?—We did, with the assistance of Dr. Kerr, I think, and other gentlemen.

1869. Did you find bones deficient and bones in excess, amongst the bones produced, for only three bodies?—Several portions of bones are deficient, such as the bones of parts of the skulls, which are still deficient; the skulls marked 1 and 3, also a portion of a right pelvis, also one rib and a portion of a rib; portions of two scapulæ or blade-bones; and, according to the list taken, 145 bones of the hands and feet; there was also a portion of a lower jaw, the left side is wanting. In excess there are two bones which I take to be portions of the acromion processes of a pair of scapulæ or blade-bones; there is also a portion of bone which I take to be the ramus and condyle of the lower jaw. Besides these there are several other bones, which I believe belong to those skulls, but which it is impossible to fit into their proper places. If I recollect rightly, in fact, I am sure, it was on the first day, the 31st October, I pointed out there were two acromion processes in excess; the others were taken down on 2nd November.

It being now 4 p. m., the Court adjourns till 10 a. m. to-morrow, the 23rd instant.

Thirty-first Day, 23rd November 1866.

On Friday, the 23rd November 1866, at 10 a. m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday, and proceeds with the Examination-in-Chief of Dr. Bowerbank.

Dr. *Bowerbank.* 23 Nov. 1866.

1870. *By Prisoner.*] When you first examined the remains, how were they arranged; were they on separate tables; are you now satisfied with the arrangement you last saw of these three supposed bodies?—On the 31st October the bones were arranged on three separate tables; the different parts of a skeleton, as near as they could be picked out, appeared to have been placed on each table. In the skeleton marked No. 3 there is some difficulty about the lower extremities; I think there is some reason to doubt whether the bones of the lower extremities belong to those of the upper extremities, and to the pelvis; all the lower extremities appear to belong to an older body than the upper extremities and the pelvis belong to. By "older" I mean a person of more mature age.

1871. Will you state whether or not you think that all the bones were bones of bodies killed and buried on the same day; do any of the bones appear to be interred longer than the others?—My opinion is that the skeleton to which the skull marked No. 2 belongs has been buried longer than the others; and I do not think that the decomposition of the soft parts of the skeleton marked No. 3 took place in that grave.

1872. Assuming that Dr. Kerr performed the exhumation of the bodies properly, and that it was sworn that all that was in the grave was taken out on such exhumation, that there was no flesh or ligaments on the bones, and only a few particles of hair, only on the head and none on the pubes, and that there were only two or three inches of clothes on one bone, and also that there were no brains, but, if anything, only adipocire or greasy matter, and that all the soft parts were generally absent, what would be your opinion as to the length of time during which the bones produced must have been interred in the ground?—My opinion is that those bones of those three skeletons must have been interred for a much longer period than eleven months and four days; and I have formed that opinion from the appearance of the bones themselves; their want of all offensive smell, the absence of all ligaments and cartilages, the dryness and comparative lightness, the friability and positive disintegration of some of them. I also found that opinion upon the results of recent observations made by myself and others upon bodies buried under nearly similar circumstances, except that in every instance, I believe, each such body was buried separately. I found the opinion also upon the evidence of Dr. Kerr as to the state in which these remains were on the 26th September, when he exhumed them, and also on the condition of the boxes and the straw in which these remains were packed for five weeks. From these observations I have no doubt that if the three bodies, the subject of this inquiry, had been buried in one grave on the 22nd October 1865, and been exhumed on the 26th September 1866, there would have been some remains of the soft parts, much hair, much clothing, and that 145 bones of the hands and feet would not have been wanting.

1873. Would the fact of three bodies being buried in one grave, in your opinion, hasten or retard decomposition?—I have no doubt that it would retard it. It is an acknowledged fact in cemeteries, where bodies are buried in coffins, and I think this would equally apply to those without coffins, that where two or three bodies are buried in the same grave decomposition is retarded.

1874. When you examined the boxes and straw, in some boxes produced as those in which these bones were originally packed, what did you find therein, if anything?—I found nothing that I noticed

noticed particularly; neither box nor straw appeared soiled.

1875. When you first examined the skulls with the bones produced, did you discover any brains, or tissue which could be taken for brains or adipocire, or the usual greasy matter, or any ligaments, or any offensive smell, or clothing or hair?—When I first examined the bones I found some hair, a small quantity, adhering to No. 1 skull particularly; there were two or three other patches of hair on the different tables, and there was a small quantity adhering to the upper part of one thigh bone, but altogether there was very little hair. There was no stench, or even any disagreeable smell. On cutting through a thigh bone, the medullary cavity was found dry, and without any apparent moisture; it smelt a little unpleasant, but that was merely the effect of sawing the bone. Some of the femuræ and tibiæ had about their condyles and heads a deposit of adipocire, as also one as inominatum of one pelvis; the lower portion of one tibia, and the ankle bones of one leg, was covered with a greasy substance of a yellow colour. One rib, a rib of the right side, I think, on its convex surface, had a small piece of cloth adherent to it, about an inch and a half square; it appeared to be of cotton, and a kind of check-blue thread was worked into it in a kind of large squares, as far as I could make out. There were no brains at all. I searched each skull carefully, to ascertain if there were any ova of insects. There was a belt, the remains of a belt, on one of the tables; three pieces of leather and a buckle. There was also a brace buckle; also a common horn button; a breeches button, I think; and a porcelain button, and two portions of pipe bowls.

1876. Can you tell if such things as belts are a common article of wearing apparel amongst the lower orders; had the belt you saw produced a fresh or an old appearance?—The belt, I think, is very commonly worn. The one I saw was an old one, and in three pieces.

The Court is closed, by order of the President, for deliberation.

The Court is re-opened, and the Prisoner is informed that the Court is of opinion that the examination of a witness called for the purpose of giving scientific evidence, should, as far as practicable, be confined to professional points.

1877. In your examination of the bones produced did you find on the tables any rope; had such an article been found would you have expected to find it after 11 months and 4 days, and in what condition?—There was no rope, or any appearance of rope; my opinion is, from recent observation, that if rope had been put there it should have been found in good condition in the grave.

1878. From the character of the injuries, and their position, can you state whether or not they might have been produced by other means than by a conical ball?—I think many of the injuries might have been caused by other means than a conical ball; this remark applies to the bones generally, not to the skulls alone.

1879. Even assuming that the injuries on these skulls were inflicted by bullets, in what relative position must, in your opinion, the bodies and the shooters have been at the same time; and can you say whether those injuries may have been inflicted some time after death?—My opinion is, as regards No. 1 skull (but I beg first to remark that the skull has now been set up, that there are now nine pieces of bone fastened on which, when I saw the skull on the first occasion, were broken off and quite detached), my opinion, from examining the wound and the state of the skull generally, is, that an Enfield rifle at 11 paces could not produce that wound on a living man. Assuming the hole to have been caused by a bullet, it might have been inflicted in three different positions; first, the erect; in which case the shooter would have been to the front and right of the skull, and to produce the entire injury the shot must have been fired rather downwards. Second, with the head bent forward; in which case the person firing would have stood to the right and fired upwards. Thirdly, lying down; in which case the firer would have stood on the right side of the body, and obliquely to the front. From the extensive injuries to this same skull, extending in all directions over skull and face, I believe, from my own limited experience, from a series of experiments lately made, and from the published results of a series of experiments by Mr. Tevan, that if the injuries to this skull arose from a bullet, they were done after death. No. 3 skull is broken up into several pieces; in fact, the only entire bone in the skull was the right parietal, and that has a fracture; the bones of the face, the individual bones of the face, are broken up, and almost every suture separated. Supposing these injuries to have been inflicted by a bullet, my opinion is that the person firing must have been above and to the right; and supposing the head to have been hanging very much down, it might have been produced by a person in front and to the right; but I repeat that no one bullet, not even a shell bullet, could have inflicted this damage. I omitted to say, that if the body had been lying on the ground, and on its right side, a person standing to the right could fire down upon it and produce that wound, if one ball could do it. I may add, that if that injury were done by a bullet, I believe that the fractures of the lower jaw, the first joint of the neck, and I think the left scapula, might all have been done by the same bullet, as they are all in the line of fire: this refers to the erect and recumbent positions, but not to the inclined one. In point of distance, I believe that the rifle must have been within two feet; and I suppose this would apply to all the positions, and to both skulls. I believe, as regards No. 3 skull, from the character of the injuries, that they must have been inflicted after death. With respect to the remaining skull, I could detect no injury to it, nor, as far as I could see, to the bones belonging to it.

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1880. Supposing that these skulls had been injured (as they now appear), what opinion would you form as to the age of those injuries on bodies buried, when you see the sharp edges of the outer tables, and the network of the diploe?—I should certainly say if those skulls broken up into pieces, as they now are, had been buried in that state on 22nd October 1865, that the sharp edges and diploe ought to have presented a more worn appearance, and not to have fitted so exactly as they do.

1881. From your examination of the injuries on the remains produced, are you of opinion, or not, that these injuries could or could not have been produced by soldiers armed with Enfield rifles, firing at the bodies placed opposite them in an upright position, and tied by the hands to a bamboo

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a bamboo fence, with their backs or their faces, in front of the soldiers, on a level?—I do not believe that an Enfield ball fired at 11 paces could have produced those injuries to the skulls of living men; and I intend that remark to apply to every position I have named, the upright, the inclined, and the lying down.

1882. In giving your opinion, now expressed to this Court, as to the bones produced, have you had the advantage of seeing soon after exhumation any body or skull, or part thereof, and, if so, by whom and when were they shown to you?—I alluded, I think, to recent observations by myself and others. I have seen the remains of Jones, a penitentiary convict, who was hung at Up Park Camp, on 26th of October 1865; I think that was the date, and was exhumed, I believe, on the 7th or 8th of November 1866. I have seen, also, the skull of a rebel who was shot, and buried, I believe, on the 12th or 13th of October 1865, and exhumed some time in August 1866. I have also seen some of the bones of a person who was buried on 13th May 1862, and was exhumed within the last few days; also, another buried on the 25th June 1865, and exhumed within the last few days; also, the bones of a horse buried in March 1865. With the exception of Jones, the penitentiary convict, and who I know was hung in October 1865, I cannot speak of my own knowledge to the dates on which these persons were respectively buried; but the remains of all, after exhumation, I have myself seen. The rebel skull, I think, was first shown me by Dr. Morris within the last fortnight, but I cannot fix the day. A portion of Jones' skeleton was shown to me by Dr. Morris on the 7th or 8th November, just after it had been exhumed. I saw the remainder of it yesterday. The remains of the other two were shown to me by Dr. Manners within the last week.

1883. When you first saw that skull, head, or body, from near Up Park Camp, after exhumation, did it present any very remarkable differences in appearance from the description of the bodies produced as already given on your evidence before the Court; what of the other skull you speak of as a rebel skull?—The first portion of that body of Jones that I saw presented a very different appearance from the remains of the three bodies in the engine-room. Several ligaments were on; portions of several ligaments were adherent to the bones; the periosteum, or membrane covering the bones, existed on many of the bones and on the skull, attached to which was a large flap of the coverings of the skull; on dividing a thigh bone with a saw it stunk very much; portions of cartilage were adherent to the vertebræ or joints of the spine; one side of the pelvis was covered with a large flap of dry tissues, and Poupart's ligament was distinct, a ligament of the pelvis; there was hair upon the pubis, and there was adipocire on some of the bones. There was a quantity of clothing, metal buttons, brass buttons verdigrised on one portion of his clothes, his number as a prisoner was painted in red letters; besides this, there was the noose of the rope by which he had been hanged; it was perfectly sound; subsequently, his head was taken and fired at with an Enfield rifle; as the ball struck the head, a large quantity of most offensive smelling matter fell out, which I believe to have been a portion of the brain. Yesterday I saw a larger portion of Jones' body, and I was very much struck with the great change which had taken place in the bones I had previously seen. I saw also a finger with the ligaments on. The other, spoken of as that of a rebel, I was shown by Dr. Morris and Dr. Kerr.

The Prosecutor here interposes, and objects to Dr. Bowerbank's giving statements as to the condition of exhumed bodies, which he could not so identify as to fix, of his own knowledge, the time during which they had been buried.

The Prisoner states in reply that he merely asks as to what Dr. Bowerbank saw. He will be able, he thinks, to prove by Dr. Morris, the dates of the burial and exhumation of that skull, said to be the skull of a rebel, and shown by Dr. Morris to Dr. Bowerbank, otherwise he must recall Dr. Bowerbank. The objection of the Prosecutor is now as to the admissibility, not the worth of the evidence.

The court is cleared for deliberation.

The court is re-opened, and the decision of the Court announced that the objection on the part of the Prosecutor is a valid one; that the examination of Dr. Bowerbank must be continued, without at present answering the question; that on the arrival of Dr. Morris, as a concession to the Prisoner, the Court will allow such questions to be put to him as they shall deem fitting, and that then they will announce whether or not Dr. Bowerbank is to be permitted to continue his reply to the latter part of the question (1883) respecting the skull, said to be that of a rebel.

The Prisoner states that he has no further questions to put to the Witness as his examination in chief.

1884. *By Prosecutor.*] With regard to No. 1 skull, I understand you to mean that the points of entry and exit of a ball going through a skull would merely determine the line of the ball through the skull, but not necessarily the relative positions of the person shooting, and of the one shot?—In making the remarks I did I implied that the line of fire was from the inlet to the supposed outlet of the ball, and that that particular wound could not have been made by a ball except in the position described.

1885. To determine such position, would it not be absolutely necessary, in addition to the points of entry and exit, to know the exact position of the head at the moment of impact?—Decidedly; that is what I tried to explain by the three positions in which I supposed the skull to be at the moment of being struck.

1886. As regards the same skull, if the line of passage in the skull were the chord of an arc, less than a semi-circle, would there be more or less, or only the same probability of the bones forming the arc, being cracked or broken, than or as, if the ball had passed through the centre?—If the chord of the arc had been less than a semicircle, there would have been more probability, I think, of the bones of that arc being broken; but I do not think that such an injury could have been inflicted by a ball on a skull during life.

1887. As regards skull No. 3, how long after death must the wounds be inflicted, to enable you to judge whether they were inflicted before or after

after death, and what is the "character" of the injuries which, you said, induced you to think they were inflicted after death?—Generally speaking, on a living skull, or as long as the rigor mortis, or stiffening after death continues, I should expect a very different wound to be inflicted, by an Enfield rifle bullet, than this. What I mean is, that as long as the rigor mortis continues, the wound will assume the same appearance as that inflicted on a living skull. Rigor mortis may continue for three days at most.

1888. *By Prosecutor.*] How does the rigor mortis affect adult bones?—Rigor mortis affects the muscles only, and has nothing to do with the bones; young or adult.

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1889. Then what were the characteristics of the bone wounds in the skull, which enabled you to form an opinion as to the wounds not having been inflicted during life, or pending the rigor mortis?—During life, or pending rigor mortis, a rifle bullet which passes through and through a skull, at the distance I named, 11 paces, makes a clean hole without the cracking of the bone or causing a large irregular opening; and does not separate the sutures, as it does in a dead or dry skull.

The Prosecutor consents to the temporary suspension of the cross-examination of this Witness, who therefore withdraws, and—

Thirty-first Witness for Defence recalled.

Staff Assistant Surgeon MORRIS, being recalled, is questioned on his former oath, by the Prisoner and with the sanction of the Court:

Staff Assistant Surgeon *Morris.*

1890. *By Prisoner.*] WHEN was the rebel whose skull you showed to Dr. Bowerbank and Dr. Kerr, shot or buried, and when was the head exhumed; speak as to your own knowledge; how long has the skull been in your possession, and from what parish did you get it?—He was shot on the 11th October 1865 by the volunteers at Morant Bay; I buried him on the morning of the 13th at daybreak. The head was exhumed in August last, I cannot tell the date; but it was the same day on which Mr. Herschell was exhumed. It was in my possession from the time of exhumation till I gave it to Dr. Kerr in Morant Bay; and it has remained in his possession since then; I got this skull in the Parish of St. Thomas-in-the-East; I was present when this head was exhumed.

Before withdrawing, the Witness requests the Court's permission to correct an error in his evidence given in reply to Question 1832, with regard to a date. The burial of Mr. Herschell to which he speaks should have been on the 13th October 1865; and the burial of the first parties on the 12th.

[The Witness withdraws.

Thirty-third Witness for Defence recalled.

Doctor BOWERBANK is recalled, and requested to reply, as part of the Examination in Chief, to the latter part of Question 1883; the question being first read to him to refresh his memory.

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Answer.] THE skull in question was a very dark-coloured skull, and had no smell about it, which was explained by its having been kept in a solution of chloride of zinc. In some of its cavities were the remains of the old ova of insects, and within it was a large loose black body, which, on a very superficial examination, I believe to be brain, dried brain.

The cross-examination is resumed.

1891. *By Prosecutor.*] Have you not known of sutures never actually joined, say, of the frontal bone, at all during the lifetime of persons who had been of adult age for many years?—Very few cases; in hydrocephalous persons, the sutures rarely join; but very few of those persons grow up.

1892. No. 3, skull. When you said that no bullet could produce the injuries to No. 3 skull, did you mean that in your opinion no part of the injury could have been done by a ball, or that one ball could not have inflicted all the injury?—I say that a ball might have gone through, when I pointed out the positions in which it might have been fired at.

1893. Do all the osseal processes unite with the chief bone at the same age?—No, by no means.

1894. Could such union of the processes with the principal bone be delayed by local disease? or if already such union be completed, might local disease disunite the two?—Decidedly; disease may protract the joining of the epiphyses; and disease, and particularly violence, may separate the epiphyses when partially united.

It being now four p.m. the court adjourns till 10 a.m., to-morrow 24th instant.

THIRTY-SECOND DAY, 24th November 1866.

On Saturday, the 24th November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment: Present the same members as yesterday; and proceeds with the cross-examination of Dr. BOWERBANK.

Dr. *Bowerbank.*

1895. *By Prosecutor.*] WILL you show to the Court the bones, one of which has been called the acromion process, and which you say are in excess of the three skeletons?

The Witness produces the three small pieces of bone (obtained from the prosecutor), which had been previously pointed out to the Court by Dr. Manners, a former witness, and states

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states that to the best of his belief, they are what he described them to be, in giving his evidence, two acromion processes of a pair of scapulæ, and the ramus and coudyle of the lower jaw, part of the ramus.

At the prosecutor's request, these bones are marked with ink by the Deputy Judge Advocate, Nos. 1, 2, and 3. No. 1 is the ramus; 2 and 3 the processes.

1896. Can you undertake to state positively that they are human bones?—I have expressed my opinion, what I believe, without any analysis or minute examination.

1897. Are not the termini or natural edges of these bones (the two acromia of scapulæ), and of part of the ramus and coudyle of the lower jaw (as you describe them) wanting; wholly, or to what extent specifically?—My opinion is, these are two acromia processes, and from the appearance of the flat edge of each, I think they are old fractures that have not been united by callus or new bone. This is not at all an unfrequent occurrence. The natural edges are not wanting.

1898. Are the ratios of the animal and mineral components of bone the same in all animals, or even in all vertebrate animals?—Decidedly not. They vary in all, according to age; and if buried, then according to the length of time they have been buried.

1899. Apart from age, is the chemical and mineralogical composition of bone in all animals the same?—Yes, for the most part it is; it may be said to be.

1900. *By Prisoner.*] Did you see on the bones produced any marks of disease, or violence, to protract or separate the joining of the epiphysis, to any such possible extent as would account in any way for the appearances of the bones produced for the prosecution?—I did not; rather the contrary. On the tibias of No. 3 skeleton, is a node or effusion of bone, the result of inflammatory action, which I considered, as regarded that particular bone, might be the cause of the early junction of the epiphyses.

1901. *By Court.*] What are the grounds upon which you give, as your opinion, that the skeleton to which No. 2 skull belongs has been longer in the grave than the others?—From its appearance; it is fresher; the bones, or the majority of them, appear to me to be less acted on than the skeleton. There has been a misunderstanding about the number of the skull. In my notes they are numbered differently to the numbers they now bear. The skeleton of the skull which I now hold in my hand, and which is marked No. 2, I have all along considered to have been longest in the ground; and I am led to this belief from its general appearance, the light and disintegrated nature of the bones, especially the ribs, tibia and vertebræ.

1902. What are your grounds for thinking that the decomposition of the soft parts of the skeleton to which No. 3 skull belongs did not take place in the same grave with the others?—From the very different appearance of the greater part of the bones; from the different colour of the greater part of the bones, and because the greater portion of those bones contained a lesser portion of adipocire than the others. I believe that the decomposition of the soft parts of that skeleton took place in another grave and in another soil.

1903. In what description of soil was Jones, the convict, buried?—In a brick mould.

1904. Is that soil conducive to decomposition, or the contrary?—Brick mould varies so much; and as I have never seen the grave in question, I cannot answer the question.

1905. Was the decomposition of Jones' remains greater or less than or such as, from your previous experience, you would have anticipated, considering the time the body had been in the grave?—The decomposition, I have no hesitation in saying, was much quicker, much more advanced, than I should have anticipated. I was perfectly surprised to find the bones of the pelvis separated.

1906. You have stated that the day before yesterday you saw a large portion of Jones' body, and were struck with the great change which had taken place in the bones you had previously seen; will you tell the Court when you first saw the bones, and will you explain the change you allude to?—It was on the 7th or 8th November I first saw a portion of Jones' skeleton. I went up to camp the day before yesterday, and on examining it, I found a great change, caused by the mouldering and falling off of the ligaments in powder, and the dried and shrivelled up appearance of the soft remains.

1907. To what do you attribute this change?—To exposure to atmosphere, and consequent more rapid decomposition.

1908. Can you tell, from the appearance of the three skeletons in the engine-house, whether there was any difference in their respective heights?—Yes. I saw the measurements, but took no note of them. One of them, however, was much taller than the others; I think it was the skeleton belonging to No. 2 skull.

The Witness requests permission to add to his evidence given yesterday in reply to Question 1874, that he found in the boxes no powdery substance, the product of decomposition.

[The Witness withdraws.

Thirty-fourth Witness for Defence.

Izett William Anderson, M.D., of the University of Edinburgh, practising in Kingston, being duly sworn, is questioned by the Prisoner.

I. W. Anderson.

1909. *By Prisoner.*] Are you a member of the medical firm, "Bowerbank, Campbell & Anderson," of Kingston?—I am.

1910. Have you seen in these barracks the bones produced as the bones of three men, said to have been shot by soldiers near the Iron Bridge, by Duckenfield, in St. Thomas-in-the East, and if so, when first did you see them?—I have; I saw them first on the 31st October.

1911. Have you recently been in St. Thomas-in-the-East, and near the Iron Bridge and Plantain Garden River Post Office?—I have.

1912. Was

1912. Was the grave in which these bodies a said to have been buried, pointed out to you recently by a person on the spot, in St. Thomas'-in the-East?—It was, on T——

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Prosecutor objects to the question, as it is hearsay, and not on oath. The person who showed the alleged grave, should pledge his oath to the truth of his statement, and assume a legal responsibility for a possibly false misrepresentation, which he would not now be liable to.

The Prisoner replies, that the Court must first hear the answer to this question, and then the Court will see who the person is, and whether he was likely to give correct information. The Witness is only asked as to what he actually saw on the spot. It is the first time in a court of justice that it was ever heard that a witness cannot speak as to what he actually saw, and describe what he saw. The Court will see by description and evidence whether the spot in question is the grave alluded to by the prosecution. The question of the worth of evidence is no objection to its reception.

The Court is cleared for deliberation.

While the Court was closed, one of its members, Captain Walters, 44th Regiment, was suddenly seized with indisposition, at 12 noon.

The Court was therefore opened, and it was announced that the Court adjourns till 10 a.m. on Monday 26th instant, and that the consideration of the subject which had been under discussion would then be resumed.

Thirty-third Day, 26th November 1866.

On Monday the 26th November 1866, at 10 a.m., the Court re-assembles pursuant to adjournment.

Captain Walters, 44th Regiment, being absent, the Deputy Judge Advocate accounts for his absence by producing a medical certificate signed by Staff Surgeon Woodman, M.D., which is read in Court, marked L., signed by the President, and attached to the proceedings.

The Court adjourns till 10 a.m. to-morrow, 27th instant.

Thirty-fourth Day, 27th November 1866.

On Tuesday the 27th of November 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment, and the whole of the members being present, proceeds, with closed doors, to decide on the objection raised by the prosecutor, and the reply of the prisoner, relative to the Question 1912, put to the witness, Dr. Anderson, on Saturday 24th instant.

The Court is re-opened, and its decision announced that, in its present form, the question is objectionable, and is not therefore to be replied to.

The Court remarks that the prisoner appears to have misconceived the objection of the Prosecutor, and has replied in a manner wanting in respect to the Court, and in courtesy to the Prosecutor. The Court, however, is willing to believe that this was unintentional on the part of the Prisoner, and due to the hurry with which the reply was framed.

The Examination in Chief of Dr. Anderson is proceeded with.

1912*. *By Prisoner.*] On your return from St. Thomas-in-the-East, did you pass over the Iron Bridge, near the Plantain Garden River Post Office?—I did.

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1913. From that post office did you go anywhere on the same day, before you finally left the post office?—I did.

1914. Did you take notice of a logwood fence and a bamboo hedge?—I did.

1915. In that logwood fence did you take notice of a dry bamboo draw rail?—I did.

1916. Did you go through that bamboo draw rail into a field?—I did.

1917. Will you look at the plan produced on oath for the prosecution (*marked* E.), and at the spot marked "grave"?—(*Witness complies.*)

1918. To the best of your knowledge and belief, did you on that occasion, go to a spot which is identical with the spot marked grave, in the plan sworn to?—Yes.

1919. How did you get to the spot to which you went, and which you state is the place marked "grave" on the plan?—I stooped under the bamboo draw rail, and went straight to the spot.

1920. Did you take anything from that spot of which you speak; and what; and can you produce it?—I took two handsful of earth from the spot, which I can now produce to the Court.

1921. Do you know, and have you seen the spot from which the body of "Jones," near Up Park Camp, was taken?—I have; I saw some of the bones exhumed.

1922. What is the nature of the soil which you took out of the spot in St. Thomas'-in-the-East, and the nature of the soil in "Jones'" grave?—I should say they are very similar, except that perhaps the soil from St. Thomas-in-the-East contains a little more alluvial deposit.

1923. Is the soil about the spot in St. Thomas-in-

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in-the-East, described as the "grave," damp or dry, or so near water as to hasten decomposition?—When I saw the spot, it was perfectly dry; there were no pools of water to be seen near it; it was about 30 or 40 yards distant from a river, but elevated about 15 feet above the level of water in that river.

1924. Did you measure the distance across the road from the bamboo rail to a bamboo hedge growing; if so, what did you find it to be?—I paced the distance, and found it to be nine paces.

1925. How long have you been in practice in the West Indies?—About seven years.

1926. Did you make a list of the bones produced; what did you find deficient or extra, for three bodies?—I examined the bones, and found upwards of 140 bones missing to complete three skeletons. I found three pieces of bone which I could not identify as belonging to either of the three skeletons.

1927. Have the kindness to look at the bones marked in ink, Nos. 1, 2, and 3, and state to what portion of a skeleton you believe them to belong?—I believe the portions marked 2 and 3, to be portions of the acromion processes of two scapulæ; the portion marked No. 1, I can hardly give a definite opinion about. I think it may possibly be a portion of a lower jaw bone.

1928. Do you or not, consider that the worn edges and surfaces of 2 and 3, are naturally dependent on the length of time the bones have been dead and buried; are the edges natural?—I think the worn edges can be accounted for, by having been buried a long time.

1929. Is it or not the fact, that a fractured acromion process unites only by ligament, and not by bone; is there a reason for this?—A fractured acromion process in almost all cases unites by ligament, in consequence of the continual movement of it produced at the shoulder joint.

1930. Have you seen an united fracture of the acromion process of the scapula; if so, did the acromion process at all resemble the bones marked 2 and 3?—Yes, I have; they did resemble the bones marked 2 and 3; and I can produce the piece.

1931. Having seen the bones in the engine-house, what is your opinion as to the length of time during which those bones must, in all reasonable probability, have been interred; do you think they could only have been 11 months and four days; state your reasons?—I think the bones now in the engine-house have been buried for a much longer period than 11 months and four days, and I found my opinion on the following facts: the general appearance of the bones, their lightness, and the small amount of animal matter they evidently contain; the fact that they are perfectly free from the smallest traces of cartilage or ligaments, that there is no trace of the soft tissues still attached to them, except a few small fragments of adipocire; the fact that some of the bones are so rotten and disintegrated, that I can break them down with my finger-nail; the almost complete absence of hair, the empty condition of the skulls; the fact that all the clothing now remaining of those said to be three persons, is about a square inch in size; and the fact that there are more than 140 bones missing, which I can only suppose have decayed. There is no smell whatever about the bones.

1932. You spoke of the bones generally, did you find any relative differences in the bones produced to make up each body severally; were all the bones for the same body of the same age, or length of interment?—I found a difference. I do not think all the bones for the same body are of the same age, or length of interment.

1933. Did you make a test to try whether there really was any animal matter in the bones produced, as the bones of the three men?—I did. I either sawed through one of the thigh bones myself, or it was sawed through in my presence, I forget which, and I introduced my finger into the medullary cavity, and found the interior of it perfectly dry, and free from the slightest odour, or soft animal matter.

1934. Did you test the results on that bone with the results on any other bone?—I did.

1935. Did you test the bone you speak of as being "Jones'," which you saw exhumed from a grave near Up Park Camp?—Yes.

1936. What was the result of your cutting through that bone of Jones'?—On introducing my finger into the medullary cavity, I found a large quantity of soft pasty matter, which emitted a most offensive smell.

1937. What general differences did you find at the time of exhumation, with reference to Jones' body, as compared with the state in which the bones produced as for three bodies, seem to have been?—The bones of "Jones" appear to have been interred for a much shorter period of time than those now in the engine-house. Many of Jones' bones when removed from the grave were found to be still adherent to one another by their ligaments; there were also large masses of fascia attached to many of the bones; the pericranium was nearly complete, and the periosteum was still adherent to many of the bones; there was more hair found in the grave than is in the engine-room, belonging to three bodies. The clothes of Jones, though rotten, were in large pieces, some of them more than a foot square, and the red paint letters were still very distinct on them. There were large masses of soft animal matter in the grave, mixed up with the earth, and they emitted a very offensive odour.

1938. Can you tell the Court whether or not the remains of the body of "Jones" appeared to have been subjected to lime?—I saw small fragments of lime in the grave, but what effect lime has on animal tissues I am not prepared to state.

1939. Could the injuries you have seen on the two skulls have been produced by other means than a conical ball?—I think so.

1940. Do you consider that shots fired at nine, or eleven, or twelve paces, on a level, by, say, from three to ten men, at three bodies, would have done the amount of mischief which appears to have been produced on the two skulls, with all sutures separated or loosened, and with other appearances visible on them; could one ball have done all that mischief?—Before answering the first part of that question, I must know how many balls were assumed to have hit out of the number fired. I do not think one ball could have done all that mischief.

1941. From actual observation are you prepared or not to state whether the curve really delineated on the map produced (*marked* E.), for the logwood fence is correct, or ought it to be more straight or more round?

Before this question was answered the Court is cleared by the President's order for deliberation.

The

The Court being reopened the Witness is directed to answer the question, if the Prisoner wishes it, but the Court reminds the Prisoner that the members themselves have carefully inspected the locality.

The Prisoner requests that the question may be answered.

Answer.—After inspecting the plan, marked E., the Witness states his opinion that the curve of the logwood hedge should be greater than it is represented to be, commencing from a point nearly opposite the abutment of the Iron Bridge, and on to a point about 20 or 30 feet beyond the bamboo draw rail; but that this is merely from observation and not from measurement.

1942. *By Prosecutor.*] How many epiphysic processes do you attribute to each human scapula?—There are two processes to each scapula, the acromion and the corocoid processes.

1943. Do not anatomists differ as to calling the inferior epiphysis a process?—I do not know what is meant by inferior epiphysis there.

1944. In what respects does the epiphysis of the inferior angle of the scapula differ from the acromion and corocoid processes?—The epiphysis of the acromion process is very much larger, thicker, and of a different shape.

1945. Did you dig in the place you supposed to be the grave on Duckenfield, or discover there any human bones?—I did not dig nor discover any bones; I merely scraped two handsful of earth from the surface.

1946. How did you ascertain first that the bones exhumed at the camp were "Jones"; and, secondly, the time they had been buried?—Only from information given me, not from my own knowledge, but I also knew the time "Jones" was buried by reference to a return published in a Blue Book.

Dr. *Anderson.* 27 Nov. 1866.

1947. Was "Jones" buried in a coffin?—I cannot speak of my own knowledge. I saw no traces of a coffin in the grave.

1948. When did you first see the bones now in the engine-house?—On 31st October last.

1949. What were the 140 bones deficient?—Bones of the hands and feet; there are more than 140 deficient, I have said, and they are principally bones of the hand and feet.

1950. *By Prisoner.*] Who were present with you when you saw the grave said to be that of "Jones"?—Dr. Morris, and one or two serjeants or privates, I am not sure of their rank.

1951. *By Court.*) Is medical science in an exact state as to the rate of decomposition of bodies; are the observations complete in regard to the climate of this island, or do the particular circumstances of each case of interment so modify even the general principles considered by the profession as established, as to render it impossible to speak positively on the subject'—Certainly not; opinions differ very much on this subject; I believe the observations in regard to the climate of this island are not complete as to the effect on bodies interred.

[The Witness withdraws.

Thirty-fifth Witness for Defence.

No. 1569, Private Samuel Cheetham, Army Hospital Corps, being duly sworn, is questioned by the Prisoner.

1952. *By Prisoner.*] Were you present at or near camp when a man of the name of Jones was hung; who supplied the rope; did you see him buried near Up Park Camp; and in what year?—I was; I supplied the rope; I saw him buried near Up Park Camp, and helped to put him in the grave; this was in 1865, in October of that year.

1953. Did you show the grave of Jones to Dr. Morris and other doctors in this year, about November?—I did.

S. Cheetham.

1954. How did you bury him, in a coffin, or without a coffin?—In his prison dress, without a coffin, and part of the rope round his neck.

[The Witness withdraws.

Thirty-sixth Witness for Defence.

No. 1576, Private Daniell Broder, Army Hospital Corps, being duly sworn, is questioned by the Prisoner.

1955. *By Prisoner.*] Were you with Dr. Morris and Private Cheetham when the body of a man called Jones was exhumed near camp; about what date in November this year was that?—They were with me; it was on the 7th and 8th of this month.

D. Broder.

[The Witness withdraws.

Thirty-seventh Witness for Defence.

Herbert Francis Orgill, residing in the Parish of Portland, Manager of a Grazing Pen, being duly sworn, is questioned by the Prisoner.

1956. *By Prisoner.*] Were you any relation of the late Rev. Mr. Herschell, who was killed at Morant Bay during the rebellion?—I was; his brother-in-law.

1957. Did you assist in the exhumation of his body at or near Morant Bay?—I did. I superintended the exhumation.

1958. When did the exhumation take place?—I may safely say on the 15th August 1866; in fact, I am sure that was the date.

H. F. Orgill.

1959. Tell the Court shortly in what state you found the body of Mr. Herschell?—I considered his body in a very perfect state; the flesh was on the body from the throat down to the knee joints;

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joints; one whisker, I may say, was perfect; it hung to the face, and there was a portion of the other.

1960. What depth did you find the grave, and was it a damp or a dry soil where his grave was?—I did not measure the depth of the grave, but I should say it was not more than 8 or 12 inches before we came to the body. I am not intimate with the locality, but I should say it would be damp, as the place was on a level with, and not far from the sea. It was damp at the time of the exhumation, but then we had been having heavy rains before.

1961. Did you see clothes upon his remains while in the grave, about the time of the exhumation: describe them as nearly as you can?—I did; the first thing I saw was a portion of a sheet; when the men cleared the earth off the body, he was lying face downwards. I made the man take him by the shoulders and raise him up. I then saw a white shirt, with his three studs in it, and I succeeded in getting one of the studs. He had on besides a black jacket, and there were portions of his drawers on him.

1962. State, as nearly as you can, the day on which he was killed, or found killed; was he or not amongst the first killed in the first week of the rebellion?—I can only answer that question by what I have heard, as I was not in the locality at the time, but I believe he was killed on the first day of the rebellion, when the Court-house at Morant Bay was attacked.

1963. Was the body in a coffin or not while it was in the grave, and before exhumation in August last?—It was not in a coffin when I had it exhumed.

1964. *By Prosecutor.*] At what part of Morant Bay was this body of Mr. Herschell buried; how far from the Court-house which was burnt was it?—It was buried down by the Wharf-road; the Court-house is elevated above it; I suppose about 30 feet above.

1965. Are you sure it was a sheet you saw first, or was it a blanket?—I saw no blanket; the first thing I saw was a sheet, a cotton sheet, a portion of a sheet, as I stated before.

1966. What was this grave covered with; was there any lime?—There was lime about four or five inches below the surface.

[The Witness withdraws.

The Prisoner requests that he may be granted time, till Thursday morning, 29th instant, for the purpose of preparing a written address.

The Prosecutor states that, as new matter has been introduced, he wishes, with the sanction of the Court, to call rebutting evidence, and, if there be no objection, he proposes to call this evidence at once, before the Prisoner reads his address.

The Prisoner objects to any evidence whatever being now given on the part of the Prosecutor.

The Court is cleared for deliberation, and being reopened, its decision is announced, that the delay asked for by the Prisoner for the preparation of his address shall be granted; that the ordinary practice of courts-martial must be adhered to, that is, that the Prisoner shall make his address, and that, at the proper time, if the Prosecutor applies to be permitted to bring in rebutting evidence against new matter, his request shall then be considered on its merits.

Twenty-eighth Witness for Prosecution recalled.

Assistant Surgeon KERR, 2nd Battalion 6th Regiment, being recalled by the Court, is questioned, on his former oath.

Assistant Surgeon *Kerr.*

1967. *By Court.*] DID any of the persons who exhumed the bodies, under your directions, point out anything as marking the grave, or did you observe how they found the grave?—We walked up towards the grave, and they began to dig at that spot. I observed nothing to mark the place. There was a discussion amongst the men about it, but there was apparently no difficulty in finding out the exact spot.

1968. When you set the skeletons up, were they perfect; if not, state shortly whether there were any bones deficient or in excess, and if so, what were they?—There were no bones in excess; the three skeletons were complete, except some of the wrist and ankle bones of the hands and feet, about 144 in number. There was also one hyoid and a-half bone missing, a bone to which the muscles of the tongue and other muscles are attached, and 28 teeth missing. I made some notes at the side of the grave, and others in the engine-house; time did not permit of complete notes being made at the grave. I corrected my notes on the 2nd or 3rd November, in the engine-house, and then there were no bones in excess.

1969. Look at the small bones, marked 1, 2, and 3; can you give the Court any explanation regarding them?—This bone, marked No. 1, corresponds to the anterior superior spinous process of the ilium, the ilium being a hip-bone. The bones marked 2 and 3, I cannot positively say what they are.

1970. Will you explain the word "correspond;" is it possible to describe to the Court your meaning, in the absence of the ilium?—If the pelvis is brought up, I can explain my meaning.

The bone in question being produced, the Witness placed the small bone, marked No. 1, in the position he intended the Court to understand, on the ilium.

1971. Can you tell the Court if there was any material difference between the state of the bones as to smell, animal matter adhering to them or otherwise, on the day you exhumed them, and their state on the 31st October last?—The matter which I described as brainy-looking matter, to avoid technicalities, and which is now pointed out to the Court as adipocire, was quite moist. This was when the bones were exhumed, and on taking out two of the heads of the thigh bone out of the cavity of the ilium, the moist adipocire was drawn out by the head of the bone. There was no offensive smell, and at the bottom under one of the bodies, there was a large piece, apparently of skin; it was white and glistening above, and of a black colour underneath. I directed one of the men to take it up carefully on his shovel; it rolled up, and was put on the side of the grave; but by the time the bones were put into the boxes, there was scarcely a vestige of it left. The bones were much

much dryer on 31st October than they were when exhumed, and the adipocire was also dryer.

1972. Under which skeleton was the supposed piece of skin found?—It was either under No. 1 or No. 2 body, certainly not under No. 3.

1973. Have you observed any appearances in No. 3 skeleton from which you could form an opinion as to whether there was any difference of age in the bones, or difference of time in their interment?—I observed no such difference.

1974. You have placed the small bone, No. 1, on the ilium; can you explain to the Court the difference of colour between the bone and the ilium?—I cannot explain this difference of colour, except it be that the small bone has been handled a great deal more than the ilium itself

1975. Can you state upon which skeleton the belt was found?—I cannot.

Assistant Surgeon *Kerr.*
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[The Witness withdraws.

Third Witness for Prosecution recalled.

Henry Clarke, being recalled by the Court, is questioned on his former oath.

1976. *By Court.*] Explain to the Court how you made this plan, marked E.; were any instruments used; and if so, what instruments; at what point did you begin?—The first instruments I used were a prismatic compass, and a measuring tape. I first commenced my observations at the spot marked "shed," and then I went over to a point opposite, in the logwood hedge, at the end of the dividing bamboo fence, across the grass field, and took them again, so that one set of observations should check the other. I got the curve of the road and hedge by fixing points in the hedge with the prismatic compass, and then measuring the distances with the tape. I had a boy with me for the purpose; and I also took a line from the bamboo draw rail to the corner of the Post-office, marked with a cross; the south-east corner; and from that line I took offsets for the curvature. I figured all these measurements down in my pocket-book of both sketches I have named, and worked it out by scale when I got back to camp. I took about five or six of these offsets; that is, I went 10 yards or so, and took one, and then another ten yards or so, and took a second, and so on. *H. Clarke.*

[The Witness withdraws.

The Court then at 3 p.m. adjourns till 11 a.m. on Thursday, the 29th instant.

Thirty-fifth Day, 29th November 1866.

On Thursday the 29th November 1866, at 11 a.m., the Court re-assembles, pursuant to adjournment: Present the same members as on 27th instant.

Prisoner's written Address. — The Prisoner hands in a written address, which he begs the Deputy Judge Advocate to be good enough to read.

This request being complied with, the Address is marked M. signed by the President, and attached to the proceedings.

Prosecutor's Request to call rebutting Evidence.—The Prosecutor now applies to be permitted to call in rebutting evidence to new matter introduced in the defence. He urges that in the first instance he was bound only to make out a *primâ facie* case, not to speculate, in anticipation, on all or any conceivable answers to it, by inference. Such latter course might be almost endless, and must to a large extent have been futile, by negativing at first, grounds of defence not eventually relied on, and probably never intended to be relied on.

The Prosecutor is, it is submitted, entitled to rebut or to explain so much of the prisoner's evidence given, as was not necessarily notified by the charge and plea on their face, and in their nature. The Prosecutor consequently claims to question, qualify, or contradict the evidence implying that the bones exhumed included some that must have belonged to a fourth skeleton; and that the mass of those produced as the bones of the three men said to have been shot, could not have been such, according to inferences from scientific testimony.

The Prosecutor would remark, that though Dr. Kerr was called by him, he was not called as a scientific witness, but merely to prove the exhumation and the custody of the bones produced.

Prisoner's Objection to rebutting Evidence.—In reply to this application, the Prisoner hands in a written paper, which is read in Court by the Deputy Judge Advocate, marked N., signed by President, and attached to the proceedings.

Court's Decision.—The court is cleared for deliberation.

The Court being reopened, its decision is announced; that, as regards the application urged by the prosecutor, that part which refers to the evidence implying that the bones exhumed included a portion of a fourth skeleton, is new matter, which could not reasonably have been foreseen by the prosecutor, and that on that point only can rebutting evidence be adduced.

Twenty-ninth Witness for Prosecution.

The Prosecutor thereupon calls Alexander Fiddes, Fellow of the Royal College of Surgeons of Edinburgh, practising in Kingston, who being duly sworn, is questioned by the Prosecutor.

1977. *By Prosecutor.*] How long have you pursued your profession, and where?—Over 20 years in Kingston; 23 years, I think.

1978. Will you look at the three pieces of bone now produced to you, and state whether or not, you can identify any of them as portions of any of the three skeletons now in the engine-room of these barracks?—I identify this piece of bone *A. Fiddes.*
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A. Fiddes
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bone marked No. 1, as being the anterior superior spinous process of the right ilium, or haunch bone, in the skeleton, which I think is No. 2, and which lies to the south of the engine-room, and on the left side as you enter. I have seen the pieces of bone, 2 and 3, before, but I cannot identify them as belonging to either of the three skeletons.

1979. *By Prosecutor.*] Will you affix No. 1 to the portion of the ilium, to which you say it belongs?—

Witness complies, affixes the bone on the ilium as requested, and shows the same to the Court.

1980. Can you state what bones the other two are, Nos. 2 and 3; can you identify them as parts of any human skeleton, or do you believe they can be so identified?—These two pieces of bone have a resemblance to the extremity of the coro-coid processes of the scapula, but I am not at all certain that they really belong to such portion of the skeleton. I am not certain.

1981. When did you first see these three bones in the engine-house of these barracks?—I did not see them till a few days back; perhaps some three or four days ago.

1982. When did you first see the skeletons in the engine-house?—

The Prisoner objects to this question, and the Prosecutor withdraws it.

The Prisoner declines cross-examining this Witness, and he accordingly withdraws.

Thirtieth Witness for Prosecution.

JAMES SCOTT, Member of the College of Surgeons of England, practising in Kingston, being duly sworn, is questioned by the Prosecutor.

J. Scott.

1983. *By Prosecutor.*] How long have you been practising surgery?—Twenty-seven years.

1984. Look at the three bones now produced to you, and say when first you saw them, and what you consider each of them to be?—I first saw these bones on Friday last in the engine-house, where three skeletons were lying. I observe this No. 1 to be a portion of one of the bones of the pelvis, that is attached to that portion termed the ilium. I found it belonged to the right ilium of one of the skeletons. The other two bones marked 2 and 3, I have also examined, but I have not been able to make out to what part of the human subject they belong.

The Prisoner declines cross-examination.

[The Witness withdraws.

The Prosecutor requests that he may be allowed time for the preparation of his reply, till 11.30 a.m. on Monday 3rd December 1866.

The Court grants the application, and adjourns till Monday next, at 11.30 a.m.

THIRTY-SIXTH DAY, 3rd December 1866.

3 Dec. 1866.

ON Monday the 3rd of December 1866, at 11.30 a.m., the Court re-assembles pursuant to adjournment: Present, the same members as on the 29th ult.

The Prosecutor reads his written reply to the prisoner's address; and it is marked O., signed and attached as usual to the proceedings.

The Prisoner claims his right to a rejoinder on the rebutting evidence brought forward by the prosecution, and requests the Court to allow him briefly, and in general terms, to address them upon the Prosecutor's reply.

This application having been acceded to, the Court adjourns for half-an-hour, to enable the Prisoner to prepare his remarks in rejoinder.

At 12.30 p.m., the Court reassembles, and the Prisoner hands in two written papers, which at his request are read by the Deputy Judge Advocate, marked P. and Q. respectively, signed by the President, and attached to the proceedings.

The Deputy Judge Advocate then begs that the Court will adjourn till 12 noon, to-morrow, to enable him to close his "summing up," which of course he had been unable to do till he had heard the final remarks on the part both of Prosecutor and Prisoner.

This request being granted, the Court at 12.40 p.m., adjourns till 12 noon To-morrow, the 4th instant.

THIRTY-SEVENTH DAY, 4th December 1866.

ON Tuesday, the 4th December 1866, at 12 noon, the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday, and the Deputy Judge Advocate at once proceeds to deliver his "summing up" in the following terms: 4 Dec. 1866.

SUMMING UP by DEPUTY JUDGE ADVOCATE.

Mr. President and Gentlemen,

THE proceedings have now arrived at the stage at which it becomes my duty to sum up the evidence, and give my opinion upon the law, in regard to the case before you. Summing up.

This trial has now entered upon its 37th day, and you have had before you 67 witnesses. As the case differs widely from those which come within our ordinary experience on courts-martial, and as the evidence is most conflicting, I must ask your attention for longer than is usual to the remarks which I have to offer. And should you think that in those remarks I am entering into the details of the case at a length and with a minuteness rendered unnecessary by your own close and unwearied attention throughout, I can only say that I do so after mature consideration, and in the hope, by putting together the evidence of the different witnesses on each point, of lightening your labour, and discharging the duty I owe you of rendering you all the assistance in my power. The charge upon which Ensign Cullen stands arraigned is for "scandalous conduct." It is framed upon the 79th article of war, and the penalty attached to the offence is cashiering. The prosecutor, in his opening address, has remarked that it might seem as if such a charge as scandalous conduct, and such a penalty as cashiering, were hardly adequate to the crime of cruelly and wantonly causing three men to be put to death, and as if it would have been better that a charge of wilful murder should have been preferred before a civil tribunal, adding that all such inquiries are irrelevant to our duty. With these concluding words you, I doubt not, will fully agree. Once satisfied that you are competent to deal with the charge, you will have no wish to look beyond the order under which you are assembled. But as this remark has been made, I think it right to remind you that a court-martial can deal with the case only as one of scandalous conduct; and by whatever other term the act charged might more strictly be designated, it certainly is "scandalous conduct." And I shall not trespass beyond my province in adding that, whatever may be the reasons which decided the competent authorities in England to bring the case before a court-martial, no other tribunal could offer the guarantees for a thorough and impartial investigation of it which are offered by this Court. Sitting in Jamaica, the Court has been able to have a view of the locality of the alleged crime, by means of which it can test the accuracy of the witnesses brought before it; and the prosecutor and the prisoner have had the advantage, of which both have availed themselves, of procuring such additional evidence as they have considered necessary during the course of the proceedings. You have been sent out specially from England, and are, therefore, not only free from the partizanship of which actors in the transactions of last year, and even bystanders, can hardly divest themselves, but you are above the suspicion of it. As officers liable yourselves to be called upon to execute martial law on the one hand, you will carefully protect the honour of the service from any proved excesses; and, on the other, you will sympathise, to a degree that the members of no civil court could, with the position of the prisoner.

The charge alleges the act to have been done on the 21st October 1865, in the county of Surrey, in the Island of Jamaica, during the continuance of martial law, and in a district over which martial law then prevailed. Mr. Jordan proved that martial law was proclaimed on the 13th of October 1865, and continued for 30 days in that district. He Q. 15.
also produced the Act of Indemnity, passed after the insurrection, as now the law of Jamaica. Q. 17.

It will not be necessary for you, in dealing with this case, to consider the exact limits Q. 18.
of the duties of an officer, and of the immunity to which he is entitled for his acts in a time of martial law, because the charge alleges the act to have been done, not in good faith, for the purpose of suppressing the insurrection, or for the preservation of the public peace in the island. Good faith is a part of every duty, and an officer doing an act not in good faith would deprive himself of the immunity to which he would be entitled had the same act been done by him in good faith. It will be enough, therefore, for me to speak in general terms. Martial law differs from the military law, which we are generally called upon to administer, inasmuch as it overrides the ordinary course of law; it has no written practice, and it extends to civilians as well as to the military. It is a rule of necessity, resorted to for the public safety, upon the judgment of the Executive Government. The duty of an officer called upon to execute this rule of necessity, is to execute it firmly, faithfully, and with as much humanity as the occasion allows, according to his conscience and good sense. While acting in this manner he is entitled to immunity for his acts. But he is thus placed in a difficult position, and when afterwards his conduct comes under investigation, it ought to be favourably interpreted, and allowance should be made for the happily exceptional nature of the position, which affords but few precedents for his guidance, and for the involuntary errors which the best and most humane men may commit when obliged to act promptly and with hardly sufficient time for reflection. Still it must be remembered also, that when an officer is entrusted with unusual powers,

he is bound by that trust to do his utmost to use them faithfully. He owes this to his country, which has placed confidence in him, and to the service, whose honour and character are concerned in his discharging his duty uprightly.

As it is important that the Court should appreciate fully the effect both of the proclamation of martial law and of the Act of Indemnity, I think it safest to state the law as laid down by the law officers of the Crown.

They have advised that, as regards all acts done by or under military authority, the proclamation of martial law in Jamaica operated within the proclaimed district to give as complete an indemnity as the Indemnity Act itself.

The Court will thus see that the Act of Indemnity gives the additional sanction of a statute to the protection already existing, and assists in marking out the limits of that protection. On this last point the law officers have advised that the effect of the Act of Indemnity would not be to cover acts done by subordinate officers without the orders of superior authority, unless they were done in good faith and under a belief, reasonably entertained, that they were proper for the suppression of the insurrection and for the preservation of the public peace in the island. The charge alleges the act for which the prisoner is on his trial to lie beyond these limits. The words, "in good faith," require your attention. Mistakes, even blameable mistakes, ignorance even culpable, do not of themselves make an act done in consequence of them "not in good faith." Either of these, with other circumstances, may be evidence to prove an act done "not in good faith," but they are not more. In order for an act to be done "not in good faith," a man must know his duty or wilfully remain ignorant of it, and violate it either for the gratification of his passion or from moral cowardice, or in that reckless disregard of it which we commonly understand by the word "wantonly."

In arriving at your finding in this case, you will have two questions to decide.

First—Did Ensign Cullen cause the men named in the charge to be shot?

Secondly—If he did, did he do so cruelly, wantonly, and wrongfully, and not in good faith, as now defined, for the purpose of supressing the insurrection, and for the preservation of the public peace in this island?

I will now go through the evidence, submitting to you such remarks as I hope may assist you.

Q. 20. Captain Hole, 6th Regiment, who was in command at Manchioneal in October 1865, states that, in accordance with orders received from Brigadier General Nelson, he detached a party, and saw it march off at 5 a.m. on the 21st October, under the command of Ensign Cullen, with Assistant Surgeon Morris in medical charge, for the Plantain Garden River Post-office.

On mentioning the name of Assistant Surgeon Morris for the first time, I must express my regret that it has been necessary to bring it so prominently into this case. I have, during the trial, suggested the withdrawal of questions in which he was named, and my suggestions have always been complied with; but I could do so only in a few instances, for fear of interfering with the conduct of the case. The alleged relations of the two officers are so involved that both the prosecutor and the prisoner, though anxious, I fully believe, to keep out his name when they could, have found it impossible to avoid introducing it constantly; I now find myself under a similar necessity.

Q. 650. The distance from Manchioneal to the Iron Bridge is stated, by Manning, the postmaster, to be nine or ten miles; not more than ten. The detachment appears to have arrived Q. 540. there about nine a.m. This time may be considered as certain, it being fixed by Manning, Q. 1210. 1212. by Police Sergeant Drysdale, and by Wolstenholme, then the senior non-commissioned Q. 1470. officer with the detachment. On their arrival, according to Manning's account, Assistant Q. 540. Surgeon Morris went into the room adjoining the shop and lay down on the table; Manning brought him some Florida water to bathe his head. Ensign Cullen asked Manning what assistance he could afford him to take Dr. Morris away, as he was suffering from fever; and Manning replied that the only vehicle he had was broken. This substantially agrees with the evidence of Maddix, who says that Dr. Morris was sick, and Q. 1559. Q. 1561. that Florida water was brought to him; and with the evidence of Dr. Morris himself, who Q. 1826. states that he was suffering from sunstroke, and that when he left the post-office he got Q. 1829. up under the belief that Mr. Cullen had obtained a cart for him, which he had endeavoured to procure. So far the accounts for the prosecution and the prisoner agree; from this point they become contradictory.

Before going further, it will be convenient to compare the evidence as to the length of Q. 651. time the detachment remained at the Iron Bridge. Manning says that, to the best of his recollection, the soldiers left in the afternoon; it might have been two or three o'clock; Q. 1473. the day was advanced. Of the soldiers who speak to the time, Wolstenholme says they Q. 1574. 1607. remained about three hours; Gordon and Blythe both say the same; Maddix says the Q. 1553. main body left about 12 noon, but that he is not certain about the hour. These four, Q. 1369. therefore, place the departure about noon. O'Connor says they remained about three or Q. 1431–1454. four hours; Hunter says that he reached Golden Grove at nine a.m., and that Ensign Q. 1529. Cullen came up not more than three quarters of an hour afterwards; Leslie, on the other hand, says that they started from the Iron Bridge at three p.m. Turning now from the soldiers to the volunteers, who came from Morant Bay and met them at Golden Grove, Q. 1292. we find that Captain Astwood and Mr. Harrison put Ensign Cullen's arrival at three p.m., Q. 1045. or a little after. Mr. Chisholm cannot state the time exactly, except that it was between Q. 1081. three and five p.m. Mr. Berry, one of the troopers sent forward to call in Ensign Q. 1230. Cullen, says that he left the post-office with him for Golden Grove at 2.30 p.m., or thereabouts. The latter are some of the most reliable witnesses for the defence, and their evidence

evidence fixes Ensign Cullen's arrival at Golden Grove about three p.m., showing that he remained at the Iron Bridge over five hours, and that the soldiers who have spoken on the point have considerably underrated the time, with the exception of Leslie. So far, then, the evidence of the volunteers confirms that of Manning and Leslie. In weighing, however, how far this inaccuracy on the part of the other soldiers affects their general testimony, the Court will, I doubt not, remember that soldiers, speaking from their recollections of what occurred a year ago, cannot be expected to be exact as to the time of a halt.

During this time, according to the account of the prosecution, Bryan, a book-keeper on Duckenfield Estate, and two constables, Wills and Colson, brought the three prisoners named in this charge to the post-office; a fourth prisoner, Francis, who has been brought before you as a witness, says that he himself escaped; but I will not detain you with his evidence. Bryan, and Anderson, a teacher, then stopping at the post-office, the only witnesses who speak as to the time, say that the prisoners were brought to the post-office about 12 o'clock, or mid-day. Manning does not fix the hour. Bryan states that he saw Ensign Cullen, and said to him, "The men have stolen nails and other things from the estate; I beg of you, you will flog them, and let them go;" and that Ensign Cullen answered, "I will go and call the doctor;" and that the doctor came out, and Bryan repeated the same words to him. Wills and Colson state the same. Q. 230. Q. 110. Q. 162. Q. 211. Q. 259. 660. Q. 541. Q. 233. Q. 119. Q. 167.

The soldiers, who are represented by other witnesses, as excited—"All happy" is the expression of Speed; "Full of glee," according to Manning—had taken the prisoners from Colson, according to his account, and they then tied them to one of the posts in front of the post-office. Q. 444. Q. 542. Q. 167.

Neither Bryan, Wills, nor Colson, say anything about preparations being made for flogging the prisoners, though other witnesses introduce the preparations as made at this time; and those three must probably have seen the making of the cat, if it took place outside the shop, as stated.

Speed, a constable at Holland Bay, says that, after the officer and doctor came out of Manning's closet, they asked Manning for twine, which he gave to the doctor; that they walked together towards the bridge, and that on their return the cat was stopped. Manning's account is that, soon after the constables had spoken to Ensign Cullen, one or two of the soldiers came into the shop for twine, which he gave to one of them, who went outside, making the cat; that, at this time, Dr. Morris rose from the table where he was lying, and went outside to Ensign Cullen in the road, and whispered to him, and that then the soldiers said, "The men are to be shot." Manning states himself to have been in the shop. Q. 444. Q. 541.

Donaldson, Manning's servant, who also represents himself as in the shop, speaks to Manning giving the soldiers twine. He says that afterwards some conversation took place between Ensign Cullen and Dr. Morris, and that the latter gave the order for the men to be shot; that at the time he gave the order he was standing on the shop floor, at the middle door, the soldiers being in the piazza, the witness himself "near enough" to Dr. Morris and Ensign Cullen, "not close, far away in the same office." Q. 434. Q. 357. Q. 357. Q. 435.

The prosecution assigns a prominent part to Corporal Hunter. Speed mentions him as being there when the cat was being made. Anderson speaks of him as tying the prisoners to the post, coming into the shop for twine, of his unloosing the prisoners, and slapping Richard Walton on the mouth on his attempting to speak; and, he adds, that after the soldiers came back from shooting, he saw Hunter's sword with blood and brains upon it. Eliza Phillips says that Hunter took the prisoners, boxed one of them, and went down the road with them before she heard the guns. She represents herself as "family" to Hunter—on cross-examination "cousin." Hunter, in his examination, says that he does not know he has any cousin of the name. Q. 444. Q. 660. Q. 750. Q. 756. Q. 761. Q. 769. Q. 1415.

In weighing her evidence you will probably think it right to consider whether her demeanour was that of a willing or an unwilling witness. Duany also represents Hunter as speaking to and boxing one of the prisoners. 787.

After the order for the shooting was given, if any order was given, the soldiers are described as taking the prisoners down the road to a bamboo rail and tying them to it. Q. 364, 365.

Ensign Cullen and Dr. Morris are represented as going with the soldiers along the road. Hamilton, Manning, Anderson and Duany, however, all say that they do not know whether Ensign Cullen went down to the firing point. Donaldson, who says he himself went part of the way, states that Ensign Cullen went "half part." Bryan, who was on horseback on the road, states that Ensign Cullen went a little way up, about four yards, and then turned back, and afterwards fixed the spot more exactly by saying, that to his knowledge Ensign Cullen was at the place where one road goes over the bridge and the other goes to Holland Estate. Q. 526. 549. 660. Q. 797. Q. 361. Q. 236. Q. 247. Q. 284.

The witnesses who speak to seeing the shooting or some part of it, are Hamilton, Anderson, Donaldson, Bryan, Manning and Duany.

The respective positions of these witnesses is a point of importance, as the defence rests partly on the impossibility of some of them seeing what they allege they saw.

Hamilton states that he stood under the shed of the shop, between the steps and the post, on the level of the road, and that he could not see the prisoners, but saw the soldiers when they fired on the opposite side of the road to the logwood hedge. Anderson says that he went out into the middle of the road, straight in front of the post-office box, where he could see the soldiers range themselves up opposite the fence where the prisoners were tied, but owing to the bend of the road and the thickness of the hedge, he did not see the bodies when they were shot. He places the soldiers just before where the road Q. 510. 523. Q. 524. Q. 511. Q. 497. 511. Q. 669.

Q. 699. bends and prevents you from seeing along it. He says they shot three different times, and the third time Dr. Morris presented a rifle.

Q. 362. Donaldson says he went down the road near enough to see who tied the prisoners, that
Q. 366. he was there when the soldiers fired, and saw the prisoners shot.

Thus, these three describe themselves as on the level of the road, but in different positions. The other three describe themselves as above the level of the road.

Q. 233. 239. Bryan says that he was on horseback at the shop-door, and could see only the heads
Q. 239. and shoulders of the prisoners when tied to the bamboo draw rail; that the leaves of a
Q. 235. logwood hedge are thin and very small; that such an object as a man's head could be seen
Q. 283. through the top of a logwood hedge even when not trimmed, and that he saw through
Q. 281. the logwood hedge as if he were looking through the jalousie of the window, to which
Q. 282. he pointed. From that position he saw also the soldiers at the moment of firing, and
Q. 240. 242. the heads drop forward. He heard five reports of guns. Saw four soldiers fire, and then
Q. 268. Dr. Morris took the gun and made the last shot.
Q. 268.

Manning and Duany represent themselves as in the shop. The former says that he
Q. 550. 551 stood at the threshold of the middle door, and that he could not see the bodies of the
Q. 553. prisoners, but only their heads; that he stooped to enable him to see under the roof of the
Q. 603. piazza, and then he could see distinctly from two to 200 yards along the Holland Bay-road; that is, not 200 yards straight along the road, because there is a bend, but that he could see distinctly the head, and, in some cases, the shoulders of a person on the road fully 200 yards off, over the fence. He says the soldiers and prisoners stopped some 60
Q. 605, 606. or 70 yards down the road, and that the soldiers were directly opposite the bamboo rail when they fired. As the testimony of this witness is treated as of importance by both parties, on account of his intelligence and position, I will read you his own words as to
Q. 542. this shooting: "I saw there three heads of the three men who were tied to the fence. I heard the word 'Fire,' and the discharge of the rifles. I saw the head of one man bow down forward after the discharge of the rifles. I heard another discharge of rifles, a second head bowed just in the same manner; a third discharge, and the last man's head fell in the same manner. A little while afterwards I saw Dr. Morris discharge a rifle at one of those men that were shot. Of course I saw the presentation of the rifles to the fence when these men were shot."

Q. 787. Duany says that after the prisoners were taken down the road, he kept himself in the shop, and after hearing two volleys, stepped to the door and peeped out, standing on the
Q. 795. floor of the middle door, and stooping a little because the roof of the piazza was in the
Q. 798. way; that he then saw one man standing against the fence, that is, he saw the head drop
Q. 818. as the gun went off, but could not see the bamboo exactly on account of the logwood hedge; and he could see the man standing against the bamboo, that is, the head and not
Q. 817. the body, and that he could see the soldiers.

The only evidence as to the number of men who fired at each discharge is that of Anderson, who puts it at more than two, perhaps between four or five, but he cannot swear with precision to the exact number. You have already heard Bryan's evidence to the effect that he heard four reports and saw four soldiers fire, but it is not clear whether he means that these four fired in volleys or singly.

Some of the witnesses state that after the shooting, Ensign Cullen and Dr. Morris returned to the shop together.

There are two points which will undoubtedly strike you in this account:

First, the word "Fire," which Manning alleges he heard, is not the word of command which would have been given by a soldier, supposing the firing to have been conducted in a regular manner. To this the Prisoner has drawn your attention.

Secondly, there is a discrepancy among the witnesses as to the number of reports. Anderson seems to make three, Manning four, and Bryan five.

Q. 666. Anderson and Cecilia Robinson went to look at the bodies after the shooting. The first says the brains of one came from the centre of his skull, right down over his face.
Q. 522. The latter took a hurried look, and says Walton's brains were mashed up and the head; a statement in which she is contradicted by some of the alleged burying party, who re-
Q. 233. 256. present Miles as the man whose brains were exposed. On the following day, Sunday, Bryan says he went to look at them, and his evidence calls for notice, because he appears to represent them as tied in a different way from that stated by the other witnesses. He
Q. 256. says that both their hands were tied to the bamboo rail, and that they lay down in a posi-
Q. 257. tion (*illustrated by placing his two hands together and hanging his body away from his hands*), their backs to the road. Upon this point you have heard the explanation of the prosecutor. All the other witnesses who have been questioned on this point, describe them as tied to the rail with their hands behind their back, and their bodies, when dead, as hanging forwards; according to the expression of Charles Robinson, "Bowed upon
Q. 929. their knees."

By thus placing together the statements of these witnesses, you will see that there are several discrepancies in their testimony. It will be for you to consider whether these discrepancies are such as would naturally occur among truthful witnesses, each describing to the best of his recollection the part he saw, or whether they are such as to throw doubt upon the whole account.

The witnesses who state they buried the bodies, are Wedderburn, Taylor, Bayley,
Q. 914. Charles Robinson, Wilkie Huntingdon, and Harriett Warren, who looked on, all from
Q. 924A. Amity Hall, and Bartley from Dalney. As to the wounds, Taylor and Bayley say that
Q. 871. the brains of one came out of his skull over his face; and the latter says they had blood all over their faces. Harriett Warren says the brains fell out of one of the skulls, and

that

that Walton had a wound in the side of his belly, that went in on one side and came out of the other. Bartley, who says he is an African, and that he came to this island with Walton, describes more exactly that Miles had a cut in his head, and all the marrow came out; that John M'Call had a cut in his neck down to his back, and Walton had a shot into his neck and a shot into his belly. Q. 960. Q. 986.

With regard to the time of burial, by comparing the evidence of Peter Phillips, the person to whose house the three prisoners were said to have been first brought on the Saturday morning, with that of Harriett Warren and Manning, it would appear that the burial took place after 10 a.m. Bryan also thinks it was about 10 a.m. He saw the bodies on the Sunday. Q. 84. Q. 884, compared with 1095. Q. 567.

Bayley says they buried the bodies by directions of two black soldiers, and Manning says he spoke that morning to a black soldier, who then went over the bridge, in the direction of Amity Hall; but no time is fixed by either of these witnesses. Q. 271. Q. 923. Q. 564.

According to the evidence, the three bodies were buried in one grave in Duckenfield grass piece, near the bamboo draw rail; and according to Wilkie, "by a bastard cedar stump." They were placed alongside of one another, with their heads to the "westward," according to Bayley, and according to Bartley, the long man, whom he identified as Richard Walton, in the middle. Q. 945. Q. 923.

They had on their shirts and trousers, and one had a leathern strap round his waist. Q. 984.

The persons who say they buried the bodies, were employed on 26th September last to open a grave, which they described as the grave; they stated they knew it by a bastard cedar root or stump. Assistant Surgeon Kerr, who superintended the exhumation, says the men apparently had no difficulty in finding the exact spot, though he himself observed nothing. Q. 839.

The account of the appearance of the skeletons when first found will be fresh in your recollection. He describes the heads as in the direction of the post-office, that is westward, and the skeleton with the perfect skull, as in the middle. Dr. Bowerbank, one of the witnesses for the defence says, that as far as he could see, there was no injury to any of the bones of that skeleton, and one of the skeletons, he thinks this one, was that of a man much taller than the others. You have heard what marks Harriett Warren and Bartley say they saw on the body of Walton, who, according to Bartley, was placed in the grave in the middle, and was the long one. Q. 1879. Q. 1903. Q. 961.

With regard to skull marked No. 1, Staff Surgeon Dunlop, another witness for the defence, says that the wound through the skull might have been caused by a conical bullet from the rifle of a person standing opposite, if the chin were resting on the chest, and the face inclined toward the left, and that assuming the head and shoulders of a man tied, were flexible, his head might have fallen into a position which would have allowed of it. Q. 1859.

The amount of injury done to this skull has been the subject of many questions directed to prove that it could not be the result of a bullet. The evidence of the prosecution, as you have heard, is that one of the skulls had a wound, which was large enough to allow the brains to come right over the face.

Such is the account of the prosecution, and if you believe it, you will probably also consider as proved, that Ensign Cullen was not at the spot with the firing party; that perhaps he did not even see the shooting, but had turned back, and that most probably the order for the shooting, if in the confusion any order, properly speaking, was given at all, before the men were taken down the road, did not proceed from his lips. Q. 666.

The words of the charge are, "causing to be shot;" and taking the most favourable view presented, I am bound to say, as a matter of law, that if he knew the men were taken down the road to be shot, he is guilty under this charge. He was in command of the detachment; the prisoners were handed over to him, and he was therefore responsible for their being shot, if he allowed it, or knowing of, did not prevent it.

The defence presented to you by the prisoner is, that the offence charged was not committed by him, or by those under his command, but that the charge is false, and got up by a conspiracy between Manning and the other witnesses.

In support of this defence, the prisoner has brought forward evidence, which may be conveniently arranged under four heads:

First. Evidence in regard to Saturday, 21st October 1865.

Secondly. Evidence in regard to Sunday, 22nd October.

Thirdly. Evidence to show that the story is intrinsically impossible and untrue.

Fourthly. Medical evidence.

I will deal with the evidence in this order.

First. The prisoner has produced Drysdale, Assistant Surgeon Morris, seven of the soldiers of his detachment, and Trooper Berry, who were all at the post-office on the 21st, to contradict the alleged shooting. But, as Drysdale reached the post-office about 9 a.m., and remained about three-quarters of an hour, his evidence applies only to the time before the prisoners are alleged to have been brought in. Assistant Surgeon Morris was at the post-office the whole time, and his evidence is contained in four answers, which I will read to you:

(Questions and Answers 1827, 1828, 1829, and 1831 are here read.)

Serjeant Major Wolstenholme, as he then was, Serjeant O'Connor, Corporal Maddix, Privates Leslie, Gordon, and Blyth, were also there the whole time. They swear that they

they were awake, and close to the post office during the halt, and that they did not see any prisoners brought in, and that they did not shoot any, or see or hear any shot. From the evidence of the prosecution as to the distances, and from your view of the locality, you will know that these soldiers, if they obeyed the orders said to have been given, not to stray from the post-office, must have been near enough to have heard the report of the rifles said to have been fired. The going down to the bamboo draw rail, the shooting, the return, the conduct attributed to Hunter, could not possibly have happened without attracting their attention; their contradiction is explicit and complete, and, if you believe them, the story of the witnesses for the prosecution necessarily falls to the ground.

The account of the prosecution with regard to Corporal Hunter is contradicted by evidence that he was not at the post-office at the time of the alleged shooting; and if he was not, the fact, considering the prominence assigned to his name, would invalidate that account to such a degree that you would probably deem it unsafe to rely upon any part of it. Hunter himself says that he was on the advance guard, and remained at the post-
Q. 1420. office only about five minutes; that there was a report that some of the 6th Regiment
Q. 1435. and some volunteers had arrived at Golden Grove, and that he went on by Ensign
Q. 1429. Cullen's order to look for a place for the detachment there; that almost the whole detach-
Q. 1435. ment followed, and that Wolstenholme was with him on the advance guard; that the
Q. 1552–1571. 1597. clock struck nine as he reached Golden Grove, and that Ensign Cullen followed in about three-quarters of an hour. Maddix, Gordon, and Blyth all state that on their arrival at the post-office a section was sent forward under Corporal Hunter. Wolstenholme says the same. I submit to you that it is impossible to reconcile this statement with evidence about which there is no doubt, and with statements made by other witnesses for the defence.

The instructions given to Ensign Cullen by Captain Hole were to proceed to the post-office, where he would receive his orders. Wolstenholme says he did not go with the advance guard of the detachment. Hunter is incorrect as to the time of Ensign Cullen's arrival at Golden Grove, as fixed by some of the most reliable witnesses for the defence, the volunteers who have been called; he is also contradicted by O'Connor and Leslie, who state that the whole detachment left together.

Should you, therefore, reject Hunter's account as untrue, I submit to you that it will require your careful consideration how far his untruth should be allowed to affect the prisoner's case. Of course, if Hunter was present at the post-office, the defence, so far as it rests on his not being at the post-office, fails; but, before allowing it further to affect the prisoner's case, you will remember that Hunter is represented as deeply implicated in the transaction; that his first object would naturally be to clear himself, and that it is only incidentally, and by contradicting the prosecution in some of the details, that his story tends to clear the prisoner.

You will remember also that persons of a higher position than Hunter have been known to set up a false alibi as the readiest defence, to stop investigation into their conduct; and if you should think that he has done this, and has induced four of his comrades to support his story with a view of shielding him, you may throw the story aside altogether, and the evidence of the six soldiers present at the post-office will remain, that the act charged against Ensign Cullen was not done. Trooper Berry, who was sent forward in the afternoon to the post-office, and, according to his own account, must have been there some time, says that he did not hear of any three men having been shot.

In addition to this, Captain Astwood states that Ensign Cullen and he sat next to one another that day at dinner at Golden Grove; that the conversation turned almost
Q. 1294–5. exclusively upon the incidents of their respective marches; that Ensign Cullen appeared free and unreserved, and that nothing was said about the alleged shooting. And I submit for your consideration that this silence at a time when, judging from the state of feeling
Q. 1302. as shown in Captain Astwood's remarks, that "Every man felt he was doing his duty, and that there was not the slightest fear of any investigation," there was no object in concealing the act, if done; combined with the fact that all the witnesses for the defence questioned on the point state that they heard nothing about it till March last, is with reason appealed to by the prisoner in his address as one of the strongest circumstances in his favour.

Secondly. The prisoner brings evidence to show that there could have been no burial, and that there were no bodies at the bamboo draw rail on Sunday morning.

That morning a body of mounted volunteers, with a few men, also mounted, of the 6th Regiment, went from Golden Grove by the post-office, over the Iron Bridge, to Amity Hall, and along the north side of the river, back by a ford higher up, to Golden Grove. Of this body, Harrison, Berry, Chisholm, who went part of the way, Fowler, Captain Astwood, Lieutenant Brass, Davis, Lofthouse, and Watson, all volunteers, have been called, and three of the 6th Regiment, Corporal Bedford and Privates Cox and Barnes.

Q. 1239. According to Berry they left Golden Grove about 6 a.m. or 6·30 a.m., and crossed the
Q. 1023. Iron Bridge about 7 a.m., Harrison makes it about 8 a.m. Several of these witnesses were asked whether they met, saw, or heard any persons with hoes, shovels, or digging implements near the grass piece, or on the road, during their march to Amity Hall; and, in answer, said they did not. As Mr. Harrison brings the force to the bridge about 8 a.m., and says it left Amity Hall between 9 a.m. and 10 a.m.; and as the burial, according to the evidence for the prosecution, took place not earlier than 10 a.m., the force had left Amity Hall before, and the Iron Bridge as much as two hours before the alleged burial. But probably a more complete explanation of their not having seen the burying party, supposing the burial true,

true, is given in this significant and ingenious answer of Lieutenant Brass: "I did not see any persons, had I seen such I should have made them prisoners." It is quite possible that the negroes themselves were aware of this danger, and therefore avoided exposing themselves unnecessarily to the risk. And this explanation is borne out by the statement of Captain Astwood, that no able-bodied negroes were found in the huts on Amity Hall Estate when they were searched.

Questions were also asked of some of these witnesses, as to the probability of the burying party working so silently as not to be heard by passers-by; and evidence was adduced that negroes were usually noisy and talkative at work. There is no evidence that there were any other persons near at the time of the alleged burial. And whatever may be the peculiarities of the negro character it can scarcely be conceived to differ so far from the ordinary standard of human nature that the habits of negroes, when engaged in their common work on week-days, can throw any light upon what they would do when burying three of their comrades on a Sunday morning; that, if the story be true, the day before, and burying them just after every house in their village had been searched by an armed body of men.

The order of the march on Sunday morning is important. Harrison acted as guide. Q. 1023.
Berry and Brandon, the latter now out of the island, formed what Berry calls the advance guard, and kept about 100 yards in front of the main body. Lieutenant Brass, Q. 1241. 1327.
Lofthouse, who acted as bugler, and Watson, were at the head of the column, Watson Q. 1612. 1684.
being, according to his own account, the right-hand man of the leading file, and immediately behind Lofthouse.

Lieutenant Brass says, that he did not at first go over the Iron Bridge, but kept the Q. 1319.
straight road leading to Holland Bay; that he was not the only one who made the mistake, Q. 1327.
and that he went down the road as far as 25 or 30 yards, measuring from about opposite Q. 1320.
the Iron Bridge; that he was called back (by whom he cannot recollect); but that when Q. 1328.
he turned back he joined Mr. Harrison; nor can he say whether the two troopers, in Q. 1331.
advance, made the same mistake; but that he saw no dead bodies, although, if his esti- Q. 1327.
mate of distance be correct, he would have been within about 20 yards of the bamboo Q. 1322.
draw rail.

Lofthouse says, they were halted because they had mistaken the road; and Mr. Q. 1613.
Harrison, or a trooper, he forgets which, was sent on to call back the advance guard, Q. 1614.
Berry and Brandon, who had taken the wrong road, and whom they followed; he cannot Q. 1629.
say how far he went down the road, as he was a stranger to the place, but it was a con- Q. 1618
siderable distance. He turned back with Lieutenant Brass, and he also saw no dead bodies.

Berry, you will remember, was not asked any questions on the subject.

Watson says, that he went down the Holland Bay-road, fully 250 yards, and that Lieu- Q. 1688.
tenant Brass, Lofthouse, and Allen, who is now out of the island, were with him; but he Q. 1704.
does not know if the two troopers in advance had also taken the wrong road. He adds, Q. 1701.
that Harrison came down the road with orders for them to turn, and, so far as he can Q. 1706.
recollect, came close to them; and that then he himself, Lieutenant Brass, and Loft- Q. 1710.
house, returned together. He saw no dead bodies on that Holland Bay-road; he noticed Q. 1711.
a bamboo fence in the logwood hedge on that road, and there were no dead bodies near to, Q. 1690.
or tied to it. It is hardly possible that he could have mistaken this bamboo fence, as he Q. 1691.
states that he was on this same road on the 8th November last, and that he noticed it Q. 1686.
then. I submit to you that the evidence of this witness will require your most careful consideration. It is not free from difficulties. Mr. Harrison has said that he was not Q. 1117.
at any place that morning from which he could have seen the bamboo fence, as he must have been had he come close to Watson at that distance along the road; and Lieutenant Brass, who turned, according to Watson's statement, with him, has said that he turned at from 25 to 30 yards below the bridge. It will be for you to consider whether Watson's recollection, after the lapse of a year, has become inaccurate as to the distance he went, or whether his statement is substantially correct.

The three soldiers of the 6th Regiment, Lance Corporal Bedford, Privates Cox and Barnes, stated that they also rode down the Holland Bay-road. Bedford's account is, that after stopping at the post-office, for him to change his saddle, the three had a race Q. 1615–1682.
down the road, between 200 and 300 yards. Barnes says that they galloped Q. 1715.
200 or 300 yards down the road, and then galloped back again, over the bridge, after the detachment; that he noticed a bamboo fence on the right-hand side, and that he Q. 1718.
did not see any dead bodies at or near it. Cox makes the distance the same, and states Q. 1734.
that he did not see any dead bodies tied to or near the bamboo fence; placing the fence, in the first instance, on the left-hand side as he returned to the post-office; but afterwards Q. 1740.
correcting himself, and placing it on his right hand; and describing it as extending all Q. 1747. 174, A.
along that side of the road, with the exception of 20 or 30 yards near the post-office. His evidence, therefore, with regard to the fence, is confined to the bamboo hedge, on the opposite side of the road to the bamboo rail, where the bodies are said to have been.

But all the three have said that they did not see any dead bodies on that road, and, Q. 1656.
making all allowance for their attention being taken up by their race, it is difficult to Q. 1716.
suppose that they could have passed three dead bodies without seeing them.

If you should think the evidence of Watson and of the three soldiers correct, the conclusion would appear inevitable, that there were no dead bodies at the bamboo rail that Sunday morning.

The prisoner has also called your attention, both by his questions and in his address to the fact that none of the witnesses questioned on the subject smelt any dead bodies, or saw any crows, "the scavengers of the country," hovering about near the Iron Bridge that morning, as might have been expected, had the bodies been there, and decomposition had commenced.

Thirdly. The prisoner has brought forward evidence to prove, first, that the story of the shooting contains impossibilities, and, secondly, that no grave could have been dug, as alleged, in October 1865.

1. The impossibilities he relies on are, that Manning and Duany could not have seen from the shop either the spot at which the soldiers are said to have stood, or the heads of persons at the bamboo rail. On these points Mr. Sinclair says that he thinks that the curve of the road and hedge would prevent a person in the shop from seeing soldiers who were standing at a point across the road, opposite the bamboo rail; that he did not place any one at the spot to try, because he was convinced that it was so, and because he knew the lines perfectly well.

Q. 1189. Q. 1070. Mr. Chisholm says that he has examined the spot over and over again, as late as the end of last October, and that you cannot from the shop see men tied to the bamboo rail.

Mr. Harrison states that on 31st October 1866 he placed a person about five feet ten inches in height, with a hat with a broad white band on, at the bamboo rail, and that standing himself on the topmost of each of the doors of the shop, he could not see anything of the person nor of the broad white band of his hat, even by peeping through the interstices of the logwood hedge. The plan, drawn to scale by Mr. Clark, and your own view of the locality, will assist you in deciding between the contradictory statements offered to you on this point. But I may remind you that when you saw the place, the logwood hedge had recently been trimmed, a point to which the prisoner invited your attention at the time; and that the evidence of these witnesses is given with reference to a period a month later, when the hedge had in some degree grown up, and that even then,

Q. 1036. according to the evidence of Harrison, it was lower than it was in October 1865, at which

Q. 1036. time he makes the height about 12 feet. You have some further clue to the actual height of the hedge at that time, by comparing the evidence of Bryan, already quoted, that, being on horseback, he could see through the hedge, as through the jalousies of a window, with that of Harrison, that wanting to look over the hedge, he rode up to it, and stood up

Q. 1029. in his stirrups to have a good view, and could then scarcely see the grass.

2. To prove that no grave could have been dug on the 22nd October 1865, the prisoner

Q. 1160. has brought forward the evidence of Mr. Sinclair, who says that he passed very close to the spot between the 1st and 6th of November of that year, and could not have avoided observing a newly dug grave, but saw nothing except a slight sinking in the earth, covered overwith grass and broomweed, which he took to be a natural undulation, such undulations

Q. 1160. being common in the field, a place where water would settle, and that the ground near the

Q. 1190. bamboo rail was then in the same state as it had been before the outbreak.

The grass in this field was cut at the end of November or beginning of December 1865,

Q. 1132. and M'Dermott, the book-keeper, who lined out the work, thinks he would have seen a fresh grave, when the grass was cut down, if there had been one. Wilson, another book-

Q. 1255. 1856. 1257. keeper, also went into the field about the same time, and saw nothing. These three speak

Q. 1258. to times nearest the 22nd October. I will not trouble you with the evidence of Wood, or with that of Chisholm, who went to look at the grave on the 28th March last, when the grave had become a matter of conversation, as their evidence adds nothing material.

Q. 1150. It will be for you, bearing in mind the rapidity of vegetation, as described by M'Dermott,

Q. 1967. and the evidence as to the appearance of the spot at the exhumation, to consider what weight you attach to the fact of these witnesses, casually in the field, not having observed anything. You also heard yesterday the argument of the prosecutor, to prove that the grave could not have been dug at any other time than that alleged.

Fourthly. The prisoner seeks to prove that the skeletons produced as those of the three men alleged to have been shot, cannot be so; and as he has brought forward several medical gentlemen of high position and character as witnesses on this point, and devoted to it a large part of his address, thus showing the importance he attaches to it; that alone, I am certain, would be enough to secure for it your careful attention.

1. He has pointed out that, according to the evidence on both sides, upwards of 140 bones are wanting. The principal bones have been produced, those missing being small

Q. 1862. bones belonging to the hands and feet. He appears to rely on their absence as evidence that they have decayed, and that therefore the skeletons must have been in the grave a considerable time. The prosecution meet this by remarking that these small bones may be presumed to have been lost in the earth of the grave.

2. There are three small pieces of bone, marked respectively 1, 2, and 3, stated by Dr.

Q. 1780. 1869. Manners and Dr. Bowerbank to be in excess for the three skeletons. Dr. Anderson confines himself to saying that he could not identify these three pieces as belonging to either

Q. 1927. 1867. of the three skeletons. He and Dr. Bowerbank think No. 1 may be a portion of a lower jaw bone. Assistant Surgeon Kerr, Dr. Fiddes, and Dr. Scott, consider No. 1 bone to be a portion of a hip-bone, and the first two affixed it to the hip-bone in your presence. All the witnesses for the defence, who speak to the point, seem to consider Nos. 2 and 3 as portions of a shoulder-blade; those for the prosecution say they cannot be positive what

Q. 1969. 1980. 198 they are.

The prosecutor in his reply, and the prisoner, in both his address and his rejoinder, have

have commented on these bones. As these comments are arguments based on the evidence, it would be beside my purpose to do more than refer you to them.

3. A great deal of evidence has been devoted to the state of the skulls marked 1 and 3. With regard to the opinions which have been expressed, as to the possibility of the amount of injury done to these skulls having been done by shots fired at them within 12 paces, I submit to your consideration the remark of Dr. Anderson, that before giving his opinion it would be necessary to know how many balls are to be assumed as having hit. Q. 1940.

The opinion of the medical witnesses for the defence, with regard to the injuries on these skulls, is, that they might have been produced by other means than bullets. Dr. Manners thinks they were; and they believe, from the loosened state of the sutures, and the extensive character of the injuries, that, if they were produced by bullets, they were inflicted after death. Q. 1879.

4. The medical witnesses for the defence have also pronounced it as their opinion, founded upon the appearance of the bones at the time of exhumation as described, and their examination of them, which, however, did not take place till upwards of a month after exhumation, that the state of decomposition in which they were found could not have been reached in eleven months and five days. In considering these opinions, I submit to you that the value of scientific evidence necessarily varies, first, according to the exactness which the science has reached in regard to the particular subject-matter under investigation; and, secondly, with reference to the individual witnesses produced, according to their knowledge, experience, caution, accuracy, clearness, and conscientiousness. Upon this second point I shall not presume to offer you any remarks. It is for you to determine their individual value as witnesses. Upon the first point you have the evidence of Dr. Anderson, that medical science is not in an exact state with regard to the rate of decomposition; that opinions differ very much upon the subject, and that the observations as to the effect of the climate of this island upon bodies interred are not complete. The evidence of Dr. Bowerbank, that he has no hesitation in saying that the decomposition of the remains of Jones, a convict buried near Up Park Camp during martial law, and exhumed last month, was much quicker and much more advanced than he would have anticipated from his previous experience, and that he was perfectly surprised to find the bones of the pelvis separated; and the evidence of Staff Surgeons Street and Dunlop, that they cannot say, with certainty, if the three bodies could not have decomposed within twelve months under the circumstances of their alleged burial. Q. 1951. Q. 1905. Q. 1824.

Your attention has been called to observations recently made by some of these witnesses upon the body of Jones, the body of Mr. Herschell, and the skull of a person described as a rebel, all buried during martial law, and the last two exhumed last August. They bring them forward in support and illustrative of the opinions given by them. You are placed in some difficulty in estimating the value of these observations, partly because you have not all the conditions of the particular cases before you, so as to enable you to judge how far the cases are really illustrations; as, for instance, in the case of Jones no evidence has been given as to the depth at which he was buried, and also because special knowledge is necessary for appreciating these observations. Still, as they have been brought before you, it becomes my duty to submit to you some suggestions regarding them.

The information respecting the last two cannot be called complete. The first case, that of Jones, was put forward as the nearest parallel to the case, as alleged, before you. In comparing the two, you will observe that one condition is common—the absence of a coffin; another condition appears to be nearly the same, the soil in which Jones was buried being, according to Dr. Anderson, very similar to that of the grave in Duckenfield grass piece, except that the latter perhaps contains a little more alluvial deposit. A third condition is unlike in the two cases, there having been lime in the grave of Jones, though no information was given you as to what effect lime has in reference to decomposition, except that Dr. Anderson is not prepared to state what effect it has upon animal tissues; and Dr. Manners is not of opinion that it quickens decomposition, that all other conditions are left without evidence and undetermined, and that the body of Jones has not decomposed with the rapidity alleged to have been the case with the three skeletons. Q. 1922. Q. 1938.

The evidence of these medical witnesses may be summed up thus: that, as far as their knowledge from study and personal observation goes, their opinion is that the bodies have been in the ground more than the alleged time. In addition, Dr. Manners, Dr. Bowerbank, Dr. Anderson, and Assistant Surgeon Morris think that in the case of one skeleton, all the bones do not correspond in age. Dr. Bowerbank further thinks that the decomposition of the soft parts of one skeleton did not take place in the grave in the grass piece. Staff Surgeons Street and Dunlop, Dr. Bowerbank, and Dr. Anderson think that some of the bones have been interred longer than others. Q. 1765. 1870. Q. 1932. 1834. Q. 1871. Q. 1814. Q. 1842. 1871. Q. 1932.

This is the substance of the evidence on which the prisoner relies, as proving the falsehood of the charge, and leading to the conclusion that it is the result of a conspiracy got up by Manning, the most intelligent of the witnesses for the prosecution, and the most likely to lead the others. In support of this view, he seeks to impeach the character of several of the witnesses, particularly that of Manning himself. I am very unwilling to make any remark which might sound harsh on my part of the prisoner's line of defence, but I feel it my duty to submit to the Court that it is to be regretted that he has introduced the religious opinions of two of the witnesses, Manning and Anderson, into it. It is wholly unnecessary for me to remind you that the Court has nothing to do with the form of faith of witnesses, but with their credibility only. But I feel confident that you will not allow the introduction of this irrelevant matter to prevent your giving full weight to all that he has urged in proof of the conspiracy he suggests.

With regard to Manning's character, the evidence you have before you is, that he is not favourably regarded by some of his neighbours, who have been called as witnesses for the defence; but is looked upon by them as having influence with the lower orders, which he uses in opposition to their views. Probably Mr. Harrison has put it candidly, when, being himself a planter, he naively says, "Since June 1865, Manning has been considered by all planters and well-disposed persons as an agitator." On the other hand, it must be borne in mind that he still holds a position of trust under Government, that of postmaster in the district, which he held before the outbreak last year. Putting all this together, it will be for you to consider how far he is likely to have set on foot a conspiracy of this kind, and to have had influence enough to have carried it out in all its details.

There is one remark in the address of the prisoner which I must not leave unnoticed, that, should your finding be against him, it would impliedly charge with perjury and a combination to defeat the ends of justice, a large body of intelligent witnesses, both civil and military. This is a mistake. There is undoubtedly a direct conflict of testimony in the case, but that conflict lies only between the testimony of the witnesses for the prosecution who speak to the events on Saturday and the burial on Sunday, on the one hand; and on the other hand, the testimony of Assistant Surgeon Morris and the seven soldiers who were at the Iron Bridge on Saturday, together with that of Watson and the three soldiers of the 6th Regiment, who say that on Sunday morning they went down the Holland Bay Road, so far as necessarily to have passed the bamboo rail. In arriving at your finding, you will certainly have to choose between the statements of the one or the other; but the truthfulness of all the evidence beyond this will be unimpeached by your verdict.

In considering this case you will, I am sure, give full weight to the high character for humanity which Ensign Cullen has received from Captain Hole, from his own brother officers, Captain Ross and Lieutenant Ballantine, the only officers of his regiment now in the island, and from every witness questioned on the subject with whom he was brought into contact during the time he was in St. Thomas'-in-the-East, as rendering it improbable that he could have committed the act charged.

I have now gone through the evidence on both sides. Some collateral points may occur to you as not touched upon, but I have thought I should best serve you by comparing and analysing what appeared to be the really important portions of the evidence.

It will be for you to decide whether it is proved satisfactorily and without reasonable doubt, that the prisoner caused the three men named in the charge to be shot.

If your finding is in favour of the prisoner on this first question, the second question which I proposed to you at the outset will not arise; but if your finding is against him, you will then have further to consider whether he acted cruelly, wantonly and wrongfully, and not in good faith, for the purpose of suppressing the insurrection or for the preservation of the public peace in the island.

In doing so, you will have the difficult task of drawing the line between an act done in mistake and one done not in good faith, and of deciding on which side the conduct of the prisoner is to be placed.

If you think, as is suggested by the prosecution, that he allowed, without trial and without waiting for orders from his superior officer, which might shortly have been expected, the penalty of death to be substituted for the lighter punishment of flogging, originally ordered in the case of these three men, for an offence wholly disproportioned to that penalty, you will have to consider whether such conduct shows that the act was done cruelly, wantonly and wrongfully, and therefore not in good faith. On the other hand must be borne in mind his youth and inexperience, his high character for humanity, and the fact that he was sent out, as deposed to by Captain Hole, without any other orders than those produced, in which nothing is said to guide him as to the treatment of prisoners; and if, making allowance for these circumstances, you decide that you can fairly come to the conclusion that the act was done by him in mistake—lamentable indeed in its consequences, but still an honest mistake—you will, I doubt not, with pleasure put this favourable interpretation upon his conduct.

And now, Mr. President and gentlemen, my task is accomplished, and the most anxious and difficult part of your duty must begin.

H. J. Maclean, Captain, Rifle Brigade,
Deputy Judge Advocate.

Kingston, Jamaica, 4 December 1866.

The Court having closed, proceeds to deliberate.

FINDING.

Finding.

The Court having maturely weighed and considered the evidence brought before it, both on the part of the prosecution and of the defence, is of opinion that the prisoner, Ensign Francis James Cullen, 1st West India Regiment, is "Not Guilty" of the charge preferred against him, and does therefore acquit him of the same.

R. T. Farren, Colonel, and Lieut.-Colonel
4th Depôt Battalion, President.

Kingston, Jamaica, 4 December 1866.

H. J. Maclean, Captain, Rifle Brigade,
Deputy Judge Advocate.

APPENDIX.

DOCUMENTS ATTACHED TO THE PROCEEDINGS.

(A.) Appendix (A).

PRISONER'S REQUEST for an ADJOURNMENT.

Up Park Camp, Jamaica, 2 October 1866.

Mr. President, and Members of this General Court Martial,

I MAKE as early as possible an application, which is scarcely ever refused in a court of justice. I have been under arrest to this moment. I am only a young ensign. I am a stranger in Jamaica. I have no experience of legal tribunals. Arrayed against me are, as I understand, an old experienced prosecutor, and also (most unusually) the Attorney General of the Colony, an English barrister, and a local solicitor, who I hear not only already had the opportunity of searching St. Thomas-in-the-East for evidence to support the charge preferred, but also every other possible advantage against me.

At the present time the sittings of the Supreme Court of Law are being held in Spanish Town, without the power of adjournment, and will last until Saturday week; the members of the Colonial bar and the solicitors are engaged there, and the professional gentlemen; the Advocate General, who has willingly consented to render me his generous aid, is busily engaged in the Court.

I ask this Court, which has the power of adjournment, in simple justice, and at all events for the honour of the service, to postpone this prosecution, so as to enable me to be provided with proper assistance for my defence during the progress of a trial which will so seriously affect my character and my prospects for life as an officer and a gentleman.

(signed) *F. J. Cullen*, Ensign,
1st West India Regiment.

(B.) Appendix (B).

PROSECUTOR'S ADDRESS.

Mr. President and Gentlemen, Kingston, Jamaica, 2 October 1866.

As the officer appointed to conduct the prosecution, it is now my duty to open to you the case against the prisoner.

The case, you cannot but be aware, arises out of the late rebellious outbreak in this island, which was put down by Her Majesty's military and naval forces by the severities of "martial law." That rebellious outbreak, and the subsequent occurrences have formed the subject of a Royal Commission; they have also been the subject of common conversation, perhaps especially in the army, and they have been discussed with strong feeling in the public press.

To a certain extent, it may be more or it may be less, but, to a certain extent, it must be that these matters are familiar to all the members of the Court. But I am sure the Court will agree with me that in the present judicial inquiry, all that you have heard or read on the subject must be, as far as possible, put aside.

I do not mean that you should by some process endeavour to extirpate the memory of it from your minds—that would be a vain task—but that you will best perform your duty in this as in other respects, by addressing yourselves in a truly impartial spirit, and with what I may call your whole attention to the evidence which will be laid before you, striving to frame your conclusions as to the guilt or innocence of the prisoner upon that evidence alone.

On this subject I need say no more, except to remark that you have been sent by Her Majesty's Government from England for the very purpose of forming a tribunal beyond all question of partiality—and the consciousness of this is a matter of great satisfaction to myself in the performance of my duty as prosecutor on this occasion.

As prosecutor it will be my duty and my desire to assist the Court to the best of my ability. I shall have to offer you, in the first place, some remarks upon the nature of the charge, which in several respects is a peculiar one; and also some observations upon the evidence which will be brought before you in support of the charge. In doing so, I shall endeavour to keep close to the matter in hand, and to avoid as far as possible every exciting topic; and I assure you it will be my constant effort to deal fairly with the case. It will certainly be my duty to make the investigation a searching one, but I hope that I shall not in your judgment press either evidence or argument unduly against the prisoner. At the very outset of the case, therefore, I am anxious to state, on behalf of the prosecution, our entire acquiescence in the well-known rule of law, that unless the evidence esta-

Appendix (B).

blishes beyond reasonable doubt that the prisoner is guilty of the charge brought against him, he is entitled to be acquitted at your hands.

Gentlemen, the prisoner Ensign Francis James Cullen, of the 1st West India Regiment, as you have heard, stands arraigned upon the following charge:—

"For scandalous conduct unbecoming the character of an officer and a gentleman, in having on the 21st of October 1865, in the County of Surrey, in the Island of Jamaica, during the continuance of martial law, and in a district over which martial law then prevailed, which had been proclaimed there for the purpose of suppressing an insurrection, and for the preservation of the public peace in the said Island, cruelly, wantonly, and wrongfully caused three men severally named Richard Walton, Tommy Miles, alias Tom Bell, and John MacCall, alias George MacQuary MacCall, to be shot to death. The said act not being done by him, the said Ensign Cullen, in good faith, for the purpose of suppressing the said insurrection, or for the preservation of the public peace in the said Island."

I will state at once that the substance of this charge is having cruelly, wantonly, and wrongfully caused the three men in question to be put to death; I believe that in the end this will be the simple issue; I believe that before the case closes you will be able to put aside all legal questions whatever, and to determine your judgment upon this charge by answering this one question:

Did the prisoner cruelly, wantonly, and wrongfully cause these three men to be put to death?

But, in the first instance, to enable you thoroughly to comprehend the charge, I desire to offer you some remarks upon the allusions in the charge to the insurrection and to martial law.

Gentlemen, it will happily not be necessary for me to insist upon any particular meaning of the phrase "martial law," or to attempt to define to you the powers, the rights, and the responsibilities, or it may be the irresponsibilities which arise during the operation of what is called martial law—large powers extending to life and death are, in fact, exercised by the military authorities—and that the general duty of officers acting under martial law has been thus described by a former Judge Advocate General, a description which, I think, must commend itself to your approval:—

"Martial law, when proclaimed, must be executed by those who have to execute it, firmly, faithfully, and with as much humanity as the occasion allows, according to the conscience and good sense of those who have to execute it."

In the present case martial law was proclaimed in the county of Surrey (except Kingston), and continued in force during 30 days, in which period a number of capital and other punishments were inflicted under the orders of Her Majesty's officers.

What renders further inquiry into the nature of martial law unnecessary in this case is, that subsequently a Colonial Act of Indemnity had been passed which has obtained the approval of Her Majesty, and has fully become law.

I must now ask your most careful attention to this statute—to the true extent and meaning of it—my object being to show that, although the statute gives indemnity for many acts, it does not give indemnity for such an act as that with which the prisoner is charged.

A copy of this Act will be placed upon the table before the Court; but before the very terms of the Act are read to you I will make the following observations upon what, I think, is its purpose and its true effect.

If martial law has been proclaimed, and loyal officers acting in the execution of their duty, with an honest intention, and with sound judgment, have put to death or otherwise punished individuals, you must all feel that such officers so acting ought to be completely protected from prosecution or legal proceedings; and you must feel that there is no such efficient protection as a special statute declaring such acts lawful, and prohibiting legal proceedings against them; in other words, a "Statute of Indemnity." Gentlemen, this colonial statute, you will see, does give such officers so acting the fullest protection. Again, a loyal officer carrying out martial law, and acting honestly all the while, may, in certain instances, or even in a whole course of conduct, nevertheless, have not acted with sound judgment in the severities he has exercised. He may have acted too precipitately; he may have been mistaken in the persons whom he has punished; he may have been mistaken as to the nature and degree of their conduct; he may have been mistaken in the degree of the punishment he has inflicted; he may have been mistaken in other ways. Such mistakes are to be regretted; but if they are mere mistakes, they ought not to deprive the officer of his indemnity; so long as he has acted with an honest intention to do his duty, with an honest desire, and in good faith, to preserve the public peace, he ought, for all such acts, to be indemnified. Gentlemen, the statute you will find does give indemnity to officers acting honestly under a mistake.

But here the statute stops, and I think you will say it ought to stop. It does not give indemnity for acts which are not done in good faith for the preservation of the public peace; it does not give indemnity for mere acts of wanton cruelty.

It is true that if in time of martial law an officer has been intrusted by his military superior in charge of a detachment to exercise his own discretion, and invested with large powers of punishment, and he does, in fact, exercise such powers, he ought not, except upon very clear evidence, to be considered to have acted with wanton cruelty. Much ought to be allowed for the novelty and difficulty of his situation, much room allowed for mere mis-judgment. But if the evidence establishes that he has, in fact, acted in bad faith; that he has, under the pretence and colour of his office, wantonly, for the sake

of

of indulging his selfish lust, inflicted cruelties on Her Majesty's subjects, then the statute gives no protection.

I will now call your attention to the very words of the Act. The preamble recites the rebellion proclamation of "Martial Law;" the suppression of the rebellion by Her Majesty's military and naval forces, with the co-operation of other of Her faithful subjects.

The Act will hereafter be proved to the Court, and read. Omitting words immaterial to our present purpose, as regards Part I. of the Act, the section will run—

"All prosecutions against military persons acting as last aforesaid (that is, acting for the crushing of the rebellious outbreak) for any matter or thing ordered or done, in furtherance of martial law, in order to suppress the said insurrection, and for the preservation of the public peace throughout the island, shall be discharged." You will observe, therefore, and this is the substance of my previous remarks, that the statute does not give indemnity, unless the act be done, "for the suppression of the rebellion and the preservation of the public peace;" and I may say more, the act must be done in "good faith" for those purposes; for we may import those words from the preamble, and from the reasonable interpretation of the section itself. Now, you will also observe that the charge against the prisoner alleges that he cruelly, wantonly, and wrongfully caused the men to be put to death, and expressly alleges that the act was not done by him "in good faith for the purpose of suppressing the rebellion or preserving the public peace."

On the part of the prosecution we shall endeavour to prove this; and, if we prove it, we say that the statute affords the prisoner no answer, no defence.

But now, if it should occur to you to inquire why the prosecution thus in the very charge anticipate a defence, which the prisoner may perhaps never put forward, I may say, that the allusions to "martial law" appear to have two purposes in view—

1st. To inform the Court and the prisoner of the nature of the Act which will be urged against him, and to remove at the outset misapprehension of the law which might possibly arise.

2ndly. To assist the prisoner to the full benefit of the statute, if the facts of his conduct entitle him to its protection.

With these remarks I shall now leave the statute, and before, however, going to the facts, I will offer a few words upon the formal part of the charge. It is framed upon the 79th Article of War, and the act is charged as "Scandalous conduct, unbecoming the character of an officer and a gentleman." The penalty upon conviction for such conduct is appointed to be cashiering. It might seem that such a charge as scandalous conduct, and such a penalty as cashiering, are hardly adequate to the crime of cruelly and wantonly causing three men to be put to death. It might seem, perhaps, that it would be fitter that a charge of "wilful murder" should have been preferred before a civil tribunal, which has properly the cognizance of such high crimes. There may be greater obstacles to such a course than we may be aware of; but in truth, all such inquiries are irrelevant to our duty. I am sure that you will feel that it is enough for us that this charge has been framed by competent authority in England, and this Court has been appointed to try it.

I will not detain you by arguing that if the prisoner is proved to have cruelly, wantonly, and wrongfully caused the men to be put to death as charged, he has been guilty of scandalous conduct, unbecoming the character of an officer and a gentleman; but I will proceed at once to the facts.

Gentlemen, the day dated in the charge is the 21st October 1865. It was on a Saturday. The place where the offence was committed was near the Duckenfield Suspension Bridge, over the Plantain Garden River, near the Plantain Garden River Post Office. The persons stated to have been shot are three men called Richard Walton, Tommy Miles, alias Tom Bell, and George MacCall, alias George MacQuary MacCall; they were labourers living in the neighbourhood. Evidence will be given you that they were alive and in the neighbourhood shortly before the time in question, and that they were not seen alive after that date.

The general story, which I shall put in evidence before you, will be this: On the morning of the day in question, during the time of martial law, Ensign Cullen was detached with about 50 men of the 1st West India Regiment, to march from Manchioneal to Golden Grove. He received his orders from Captain Hole of the 2nd Battalion 6th Royal Regiment, who will be called before you and produce his orders. Dr. Morris, who I believe is an older person than the prisoner, accompanied the detachment as assistant surgeon. The party left Manchioneal about 5.30 o'clock in the morning; after coming down Quai Hill and crossing the Suspension Bridge, the party arrived at the Plantain Garden Post Office and store, close to the Suspension Bridge, which was kept by a Mr. Manning. They arrived here between eight and nine o'clock; they halted, and Dr. Morris went into a room inside the house and lay down, for he stated that he felt ill. The soldiers broke off to rest and get refreshments. These facts which I have related to you there cannot be any doubt about. The witnesses will further tell you that the party halted altogether at this place between three and four hours. This is a fact of great importance, and I shall submit to you that it is a correct statement.

Now, as to what took place during this time; the witnesses for the prosecution will tell you that on that morning the three men who are named in the charge, together with another named Francis, were taken prisoners for stealing nails and corn at Duckenfield,

Appendix (B).

by one Halliday, who took them to one Phillips, the head man in Duckenfield, who delivered them over to three constables, Bryan, Hills or Wills, and another, to be handed over to the military. As the three constables, with the four prisoners, were approaching the suspension bridge, one of the prisoners, named Francis, got his hand out of the rope that secured him, and made his escape into a cane field; about the same time some of the soldiers saw the prisoners, and began to cry out, as the witnesses will depose, "Prisoners are coming! Prisoners are coming!" The three prisoners were brought to the post-office, and were secured to a post, or to several posts, in the Piazza, and they were delivered over to Ensign Cullen. The witnesses will tell you that Ensign Cullen directed the men to be flogged, and that application was made to Mr. Manning, the postmaster, for some twine to make a cat with. Some conversation then took place between Ensign Cullen and Dr. Morris. Nothing was said to the prisoners, but in the presence of Ensign Cullen, if not by his direct order, the three men were untied from the post by the soldiers, and were taken by the soldiers about 80 yards off; Dr. Morris went with them, and Ensign Cullen also. The men were then forthwith secured to a bamboo fence, and shot by the soldiers. Ensign Cullen was looking on, probably, it will appear, at a little distance in rear; whether he gave an order to fire immediately before the men did fire, is not so certain. One of the prisoners was not killed by the discharge, upon which Dr. Morris took a rifle, and fired it at the prisoner (and as the witnesses will depose), killing him. The soldiers then returned to the house, and shortly afterwards resumed their march to Golden Grove, where they arrived the same afternoon.

Gentlemen, the facts I have been describing will be deposed to by a number of witnesses, who declare they saw them take place with their own eyes. There will be three constables, who escorted the black prisoners; there will be Mr. Manning, the postmaster, who is a respectable tradesman, and holds the post-office under Government; his servant boy, Donaldson; Duaney, who keeps the lighthouse on the coast, and Anderson, a schoolmaster. These men were eye-witnesses to the whole transaction, and will detail it all to you circumstantially; and Duaney will tell you that he knew the man Walton, well, as a man who had taken messages for him from time to time from the lighthouse to Kingston; and that when the man was going to be flogged, he told Ensign Cullen this, and gave him a good character. The man Francis also, who made his escape into the bush, will tell you that he heard a gun go off. On the following day, Sunday, the three bodies were buried, and this was done by some labourers who reside in the neighbourhood, and who will give what seems to be very satisfactory evidence of the identity of the bodies so buried, with those subsequently exhumed.

The conclusions from this evidence would seem to be,

1. That the three men were shot to death.

2. That Ensign Cullen (who you will remember was in charge of the detachment), caused them to be shot to death.

3. That he did so, cruelly, wantonly, and wrongfully, and not in good faith for the suppression of the insurrection, or the preservation of the public peace.

As I shall have an opportunity of addressing you again, I shall now proceed to call before you a few witnesses to prove a plan of the premises at the post-office, the proclamation of martial law; and it is my duty to submit to the Court the advisability of at once proceeding to the spot where the alleged occurrence took place, for the purpose of viewing the premises.

(signed) *C. Daniell,*
Lieut. Colonel, 28th Regiment,
Prosecutor.

I may add here upon paper, with respect to the application for a postponement of the trial, what I have already said, that I do not assume the responsibility of agreeing to it; I leave it entirely in the discretion of the Court; I am here to aid in the administration of justice, and in the prosecution of such inquiries as may be necessary thereto. If the Court should be of opinion that the ends of justice will be better met by the postponement, I am sure it will be assented to, but not otherwise. Should, however, the Court be of opinion that there ought to be a postponement, as asked for by the prisoner, until the 15th of October, then I ask for one further day's postponement, say to Tuesday, the 16th of October (this day fortnight), as one of the gentlemen who is assisting me, in the expectation that the Court would have concluded its duties before Monday, the 15th of October, has made an engagement for that day, which he cannot well forego.

(signed) *C. Daniell,*
Lieut. Colonel, 28th Regiment,
Prosecutor.

Jamaica, 2 October 1866.

(C.)

THE LAWS OF JAMAICA. Appendix (C).

ANNO REGNI VICESSIMO NONO VICTORIÆ.

CAP. I.

AN ACT to indemnify the Governor, and all other Officers and Persons concerned in Suppressing the late Rebellion in this Island.

Preamble.

WHEREAS, being seduced by the insidious counsel of wickedly-designing persons, many of the Queen's subjects in this island conspired by force to overthrow the constitution and government here established by law; and, in furtherance of such their purpose, did, by force, and in confederated multitude, commit, on the eleventh day of October, in this present year of our Lord, one thousand eight hundred and sixty-five, and on divers other days then following, in the parish of Saint Thomas-in-the-East, many burglaries, robberies, arsons, murders, and other felonies, with treasonous purpose, in renunciation of their natural allegiance, and to the intent of the general massacre of all loyal and well-disposed subjects of the Queen here dwelling: And whereas upon being informed of such the aforesaid atrocities, his Excellency Edward John Eyre, Esquire, the Governor of this island, with the advice of a council of war, and in order to prevent the extension of the said rebellious outbreak, did proclaim that martial law should obtain and prevail throughout the county of Surrey, with the exception only of the city and parish of Kingston: And whereas, under God's providence, the military and naval forces of the Queen, with the loyal co-operation of others, her Majesty's faithful subjects in this island, have arrested the spread of this rebellion, and saved the lives of law-abiding citizens from eminent general sacrifice: And whereas, military, naval, or civil authorities, necessarily employed in the prompt suppression of the atrocities aforesaid, may, according to the law of ordinary peace, be responsible in person or purse for acts done in good faith, for the purpose of restoring public peace, and quelling the rebellion aforesaid: And whereas, it is expedient that all persons whosoever, in good faith, and of loyal resolve, have acted for the crushing of this rebellious outbreak, should be indemnified and kept harmless for such their acts of loyalty: Be it therefore, and it hereby is enacted by the Governor, Legislative Council, and Assembly of this island,

Personal actions, indictments, prosecutions, &c. against civil or other officers, and persons acting under orders, from promulgation of martial law, made void, and such persons indemnified.

First. That all personal actions and suits, indictments, informations, attachments, prosecutions, and proceedings, present or future whatsoever, against such authorities or officers, civil, military, or naval, or other persons acting as last aforesaid, for or by reason of any matter or thing commanded, ordered, directed, or done since the promulgation and publication of the proclamation of martial law aforesaid, whether done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, in furtherance of martial law; that is to say, on, from, and after the thirteenth day of October last past, and during the continuance of such martial law, in order to suppress the said insurrection and rebellion, and for the preservation of the public peace throughout the island, shall be discharged and made void; and that every person, by whom such act, matter, or thing shall have been advised, commanded, ordered, directed, or done for the purposes aforesaid, on, from, and since the said thirteenth day of October, and during the existence of such martial law, shall be freed, acquitted, discharged, and indemnified, as well against the Queen's most gracious Majesty, her heirs and successors, as against all and every persons and person whomsoever.

The Governor and all other persons also indemnified for all acts done in order to put an end to said rebellion, which acts are declared lawful.

Second. And it is hereby also enacted, That his Excellency Edward John Eyre, Esquire, Captain-General and Governor-in-chief, and all officers and other persons who have acted under his authority, or have acted *bonâ fide* for the purposes, and during the time aforesaid, whether such acts were done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, are hereby indemnified in respect of all acts, matters, and things done in order to put an end to the said rebellion; and all such acts so done are hereby made and declared to be lawful, and are confirmed.

To remove doubts as to legality of acts done, Governor to declare them done by authority, &c.

Third. In order to prevent any doubt which might arise, whether any act alleged to have been done under the authority of the governor, or to have been done *bonâ fide* in order to suppress and put an end to the said rebellion, was so done, it shall be lawful for the Governor for the time being to declare such acts to have been done under such authority, or *bonâ fide* for the purposes aforesaid; and such declaration, by any writing under the hand of the Governor for the time being shall, in all cases, be conclusive evidence that such acts were so done respectively.

Appendix (D).

(D.)

ORDER from Brigadier General *Nelson* to Captain *Hole.*

MEMORANDUM.

CAPTAIN HOLE, Commanding Troops, Manchioneal, will detach a party under command of an officer, consisting of 50 men, in light marching order, and provided with 60 rounds of ball cartridge.

The party to leave Manchioneal at 5 a.m. to-morrow, Saturday, 21st October, and to move to the post-office on the direct road between Manchioneal and Bath, supposed a distance of 15 miles; this body will find other troops from this at post-office, and the officer in command has his orders.

Great importance is attached to the party leaving Manchioneal at the above hour, and nothing is to diverge or hinder their march on post-office, extreme emergencies alone excepted.

(signed) *A. A. Nelson,* Brigadier General,
Commanding Field Force.

Captain Hole, Commanding Troops, Manchioneal.

P. S.—Boots will be sent up soon as possible.

(E.), (F.),)G.)—*See* Drawings opposite.

Appendix (H).

(H.)

PRISONER'S OPENING ADDRESS FOR DEFENCE.

Mr. President and Gentlemen of this Honourable Court,

I CANNOT forbear from expressing at once my sincere thanks to the several members of this Court, as well as to the Judge Advocate, for the considerate and patient attention which has been already paid to the investigation of this most harassing and painful charge; nor can I omit to thank Colonel Daniell, the prosecutor, for the kindly manner in which he is endeavouring to discharge his unwelcome task.

Although it may, perhaps, have seemed that, in taking so much time thoroughly to sift (so far, indeed, as the mode of procedure in courts martial will allow) the testimony adduced, and the character and bias of the several witnesses brought forward against me—I may have been tedious—it may be allowed me plainly to state, that I pursued that course *bonâ fide,* in order that the members of this Court, who have hitherto been entirely unacquainted with the credibility of persons of that class of life in West India colonies, might have the full opportunity of judging for themselves, whether they, like the large majority of those resident in the colonies experienced in such matters, agree with the Royal Commissioners in the conclusion arrived at by them, in their report to Her Majesty the Queen, to this effect:

> "But besides the difficulty of enforcing adherence to method in the distribution of the evidence, we encountered one of a still more serious complexion in the nature of the evidence itself.
>
> "In many cases the witnesses manifested a singular ignorance of the nature and value of evidence, as well as a misconception of the proper scope of the inquiry.
>
> "As regards the negroes, it is enough to recall the fact that they were, for the most part, uneducated peasants, speaking in accents strange to the ear, often in a phraseology of their own, with vague conceptions of number and time, unaccustomed to definiteness or accuracy of speech, and in many cases still smarting under a sense of injuries sustained.
>
> "Many of them, again, misconceived the object of the commission, and came to tell their tale of houses burnt or property lost, in the undisguised hope of obtaining compensation. Some also heard of the money which was being paid out of the funds at our disposal to those who travelled to Spanish Town to give evidence.
>
> "Even as regards the other witnesses, many even of the educated class could often scarcely be restrained from giving opinions, in general and positive terms, as equivalent to facts, or from stating as facts, within their own knowledge, matter communicated to them by others.
>
> "Some of the evidence which we have received was wholly unworthy of credit, and has been discarded by us in the preparation of our Report."

I would respectfully ask each member of this Court whether those passages do not speak with telling force of the witnesses who have been already examined before this Court.

While

(E.)

PLAN OF GROUNDS NEAR PLANTAIN GARDEN RIVER POST OFFICE.

Scale 20 feet to an Inch.

10 0 10 20 30 40 50 60 70 80 90 100 110 feet.

N

Iron Bridge

To Manchioneal

Shed

Post Office

Road from Golden Grove

Bamboo fence closing up opening in logwood hedge.

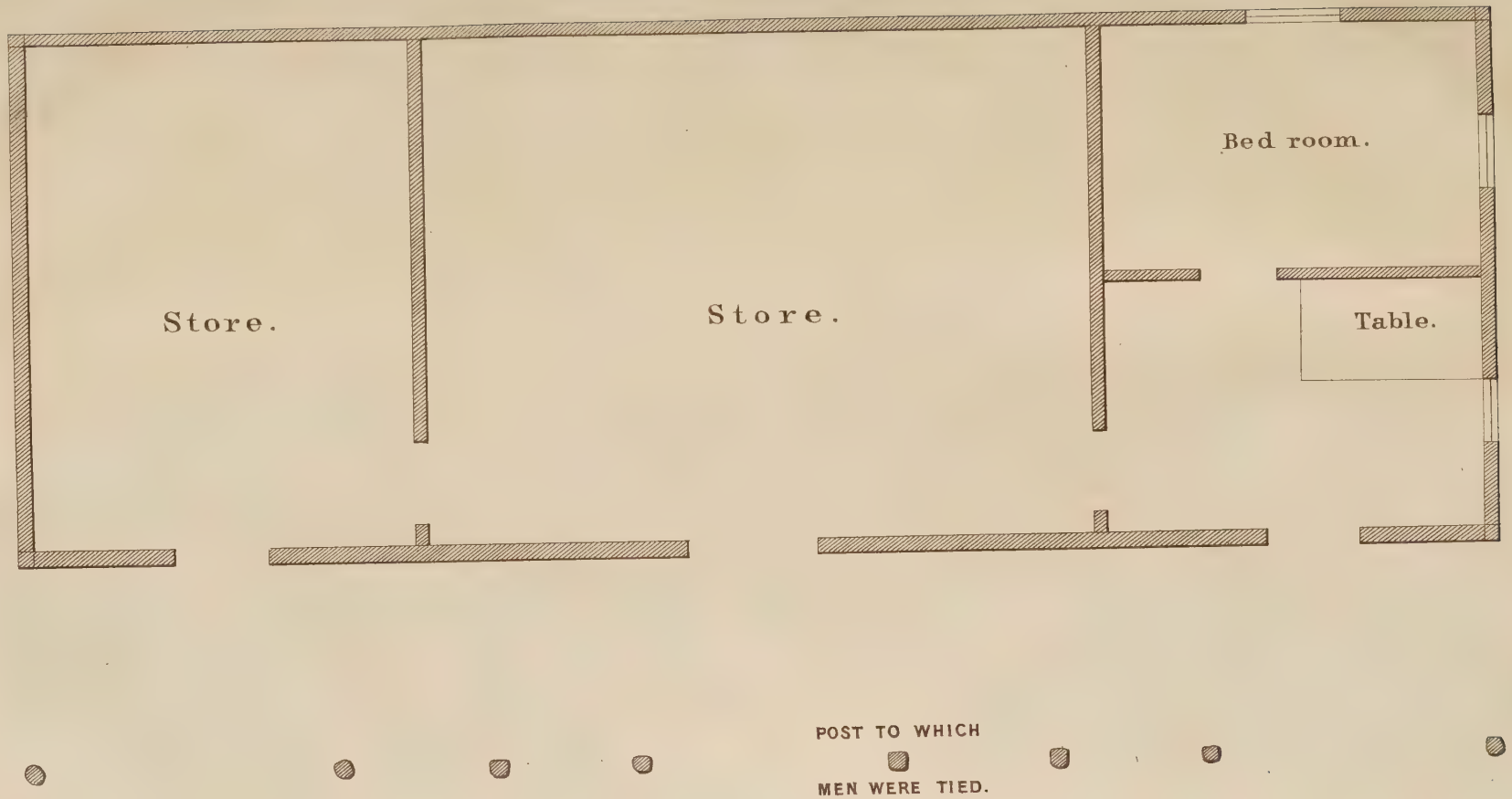
Grave

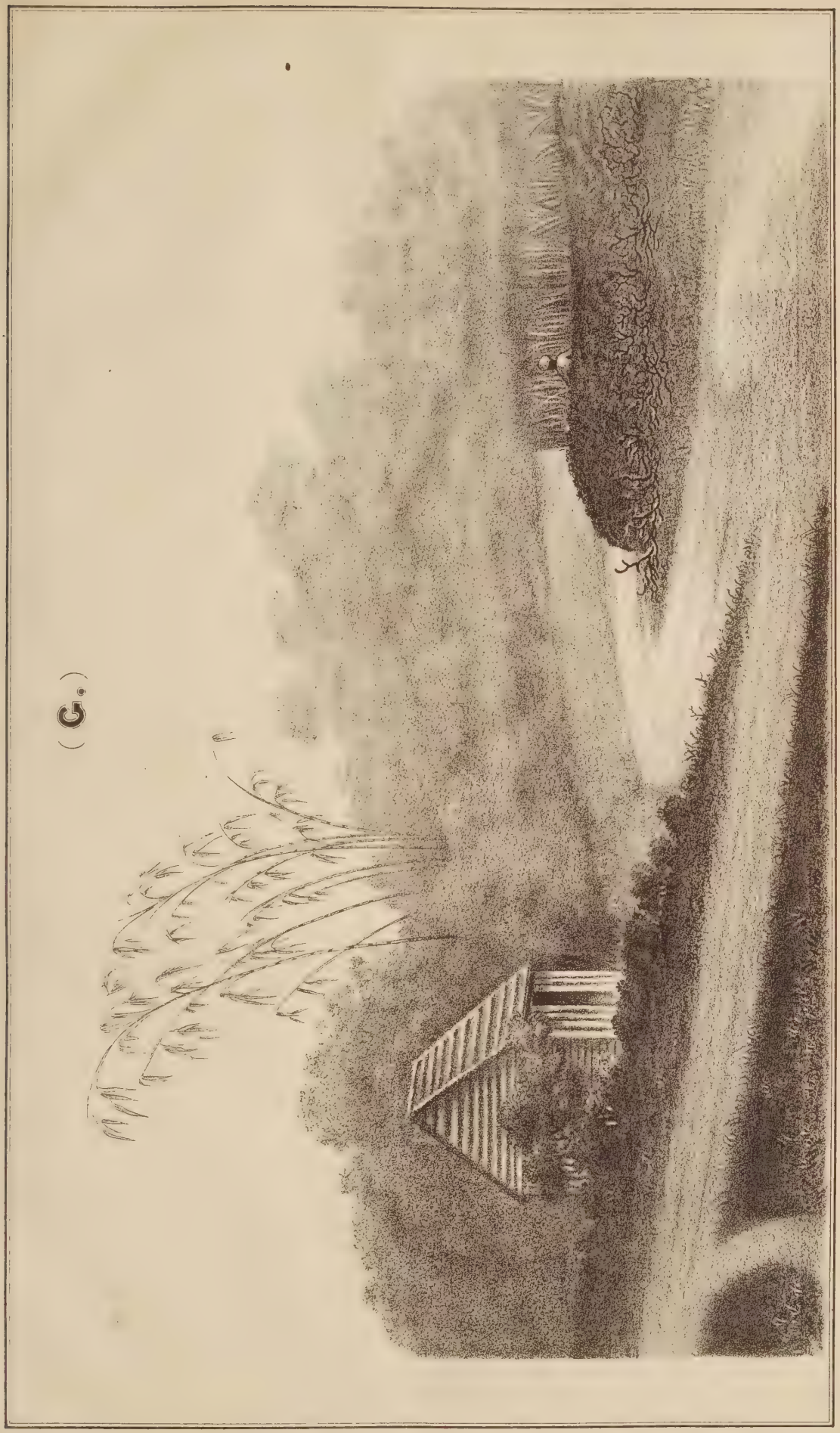
Bamboo fence

Duckinfield Grass Piece.

(F.)

PLANTAIN GARDEN RIVER POST OFFICE.


Store.
Store.
Bed room.
Table.
POST TO WHICH
MEN WERE TIED.
Scale 5 feet to an inch.
10 8 6 4 2 0 5 10 15 20 25 Ft.



(G.)

Appendix (H).

While I now, however, to save the time of the Court, abstain from at length entering into or commenting upon the full subject-matter of my defence, I cannot (prisoner as I am on this disgraceful charge) but protest that I most bitterly feel that this inquiry was instituted, and is being held, at a time when passions of every kind in the colony, and in the mother country, have been greatly aroused on account of the rebellion in this island; and I may be pardoned for thinking that in my person the credit of the whole service is at stake on this inquiry. If I was so clearly guilty, why was I not at once placed under arrest, and prosecuted in April last? Why was I so long a time continued in the discharge of my duties as an officer after the same period just mentioned?

If I was so clearly guilty of this foul charge, why were not the bodies exhumed in April last, at latest, so as at once to remove all doubts entertained or expressed?

You will pardon me for this outburst of feeling, if you only bear in mind that the die of my life is cast upon your decision, if not the honour of an officer of the Queen.

Conscious, however, of my innocence—fearless of the most searching inquiry—I feel assured that when in all judicial purity your unbiassed finding shall have been arrived at, the records of this tribunal will manifest that, though wholly inexperienced and devoid of counsel during a time of great peril and terror (when even wiser and older men might have erred), I have not disgraced the service, or dishonoured myself by the commission of the wanton cruelty alleged against me; and that to these records will I hereafter proudly point as your living testimony (some of the best and the most honourable of my comrades) of my still stainless character as an officer and a gentleman.

Craving your continued calm forbearance and sympathy through this torturing ordeal for one but a youth (stouter heads might quail), I will at once proceed with the evidence for my defence.

(signed) *F. J. Cullen*, Ensign,
1st West India Regiment.

(I.)

PRINTED PLACARD.—(See Question 1340).

Appendix (I).

JAMAICA ROYAL COMMISSION.

I HEREBY give notice, that Mr. Edward Whitehouse Lewis has been appointed by the Royal Commissioners to visit the parish of St. Thomas-in-the-East, and make inquiry of all persons who can give evidence of such importance as may require them to be summoned as witnesses.

Charles S. Roundell,
Secretary to the Royal Commission.

Spanish Town, 13 February 1866.

(K.)

MEDICAL CERTIFICATE as to Illness of Prisoner.

Appendix (K).

Up Park Camp, Jamaica, 15 November 1866.

WE certify that Ensign Cullen, 1st West India Regiment, is still suffering from fever, and that his attendance on the General Court Martial at Kingston might be followed by dangerous results.

We are of opinion that he will not be able to attend the Court before Monday, the 19th November 1866, with safety.

(signed) *G. T. Woodman*, M.D., Staff Surgeon.
John Dunlop, Staff Surgeon.

(L.)

MEDICAL CERTIFICATE as to Illness of Captain *Walters*.

Appendix (L).

Kingston, Jamaica, 26 November 1866.

THIS is to certify that Captain Walters, 44th Regiment, is too unwell to sit on the court martial this day.

General nervous debility and biliary derangement.

(signed) *G. T. Woodman*, M.D., Staff Surgeon.

To Captain Maclean, Deputy Judge Advocate.

Appendix (M).

(M.)

The SECOND ADDRESS of the Prisoner Ensign *Cullen*, as prepared by his Professional Friend, allowed by the Court, the Advocate General, *J. S. Williams*, Esq.

Mr. President, and Gentlemen of this Honourable Court,

THE Royal Commissioners thought it their duty to comment upon the subject-matter of this charge as follows:

> " A good deal of our time was occupied in an inquiry into the case of an alleged shooting of three men, by a detachment of the 1st West India Regiment, under the command of Ensign Cullen.
>
> " The evidence was conflicting, and we do not feel called upon to decide upon which side the truth lay. But we think the character of the service is so deeply involved in a question affecting the conduct and veracity of two officers, and several men, that it may well form the subject of further inquiry."

I have already besought your earnest and impartial attention to the remarks made by the Commissioners as to the characters, and motives, the bias, and ignorance of the witnesses, who (on an inquiry to a certain extent exactly the same as yours) appeared before them, as before you, to establish this charge of cruelty—may I not call it murder?

The several members of this Court may be in a position to know the instance of the woman who swore before the Royal Commissioners that she had been brutally flogged, yet failed, on medical evidence before Sir Henry Storks, to have received a single lash; and another instance of the woman who there swore that she saw another woman shot, and immediately delivered of a child, and that the child (still-born) and the mother were buried together; and that in company with the Royal Commissioners she went to the spot in question, when she fell down on her knees, confessed she had sworn falsely, and that the whole statement was a fabrication, and that she sued for pardon.

It will be for the Court on this momentous issue, without doubt, to decide whether, in my person, the honour of the service is to be tarnished by there being set aside all the doubts which the Royal Commissioners (on weight of testimony far less produced before them on the part of the soldiers) yet thought fit to entertain as to the credibility of the witnesses, who ventured to swear before them, as before you, to the commission of this foul outrage, for which I am here prosecuted.

Surely tenfold greater must your doubts be as to my alleged guilt, when, bearing in mind the solemn declaration of such men as Lieutenant General Sir Henry Storks, and the Right Honourable Russell Gurney, Q.C., and John Blosset Maule, Esquire, Q.C. (Recorders of London and of Leeds), you calmly consider the whole of the evidence before this general court martial.

Mr. President, and Gentlemen, you are charged with the offices of judges; to you is, as you must feel, sacredly entrusted the credit of the military service of Her Majesty the Queen, before the eyes of the whole world, even though it may seem, at first sight, that only the prospects of a young ensign are in jeopardy.

In commenting, therefore, upon this voluminous evidence, pray pardon me if I do so with a full sense that it is not only my character as an officer and a gentleman which is at stake, but also the fair name and reputation of every British officer. I first thank Colonel Daniell for the manner in which he has discharged his painful duty. I earnestly trust that he will not think that my comments at all refer to him, or those concerned with him for the prosecution.

Now, the 21st October 1865, Saturday, is of the most vital importance; for if the offence charged was not committed on that precise day, it most certainly was not and could not have been committed by me, or under my command, if even it was committed at all. On no other date is it pretended, or can it be shown, that I marched with this detachment from Manchioneal by the Post-office, and after halting there for hours, on to Golden Grove; it is while on this march, and this march alone, that it is alleged that these three men were killed by soldiers under my command.

Now, then, take the witnesses for the prosecution, who have spoken to this particular date, and ask, I entreat, yourselves these questions—

First.—Are they all persons who can read or write?

Second.—Are they all persons who had any particular reason or motive for recollecting this particular date, and yet no other?

Third.—Are they all persons whose position or character would entitle them to credibility as to particular dates?

Fourth.—Consider the lapse of time—a year! When first did they tell their story as to this transaction, and not only so, but also the identical date?

Fifth.—Are some of these people most probably actuated by revenge, and influenced by pressure of others to combine and concoct a story, so as to pervert certain facts, innocent in themselves, into deeds of gross crime, and so as to transpose the time of the commission of a fact to another day, so as to suit a diabolical purpose?

Sixth.—Do some of the most important witnesses for the prosecution venture to speak to any dates at all?

You

You will assuredly find that of the several witnesses (probably some of them flogged during martial law) called as to most important dates and facts, 13 are mere labourers, and can neither read nor write, nor tell the date of any other principal occurrence whatever, even during the rebellion, or this year, or last year.

You will certainly see that none of the witnesses for the prosecution had any particular reason or motive for any such recollection at the time, or for long after; most of them did not come forward till this very Court was to hold its sittings just after the prosecutor (of course with a preconceived object) had in the name of the Queen, in performance of his most irksome duty, proceeded to Saint Thomas-in-the-East, in September last, to scour the district for evidence, unfortunately necessary, from persons of the lowest class in life, persons but ever ready to get up and swear to a grievance. The rest of them (two only) did not appear until the 17th and 19th of March, at the instigation of those who, if the truth must be told, took advantage of the ignorance and passions of the people, and sought to make political capital to serve unworthy ends.

Do take the report of the Royal Commissioners; remember the evidence of experienced persons sworn to before this tribunal; forget not, Mr. President and gentlemen, your own personal experience of the crowds of persons who rushed upon you with their concocted tales of grievances and oppressions, when you went down to Saint Thomas-in-the-East solely for the purpose of this judicial investigation; and then, Mr. President and gentlemen, you may be able to judge for yourselves in pity, but in justice, of the credibility of the witnesses produced for the prosecution.

Again, who ever heard a whisper of this tale until March last? and yet the Royal Commissioners had been sitting in Spanish Town from January until April, and, in addition, one of the Commissioners had proceeded to the spot, and had been rigidly inquiring into these matters from the 22nd February to the 29th, irrespective of other extraordinary means adopted by the Royal Commissioners, and their special agent, Mr. Lewis, to say nothing of those who, from abroad and in the colony, were eager a thousandfold to intensify and exaggerate the alleged barbarities of the soldiers during martial law.

Mr. Sinclair, the overseer of Duckenfield, and Mr. Chisholm, the overseer of Golden Grove, men who employed hundreds of the labourers in that district, heard nothing of this tale till March or April 1866; only, however, when Manning and Anderson set it afloat.

Mr. Harrison, a resident magistrate, and an attorney of a large estate, a person constantly amongst hundreds, if not thousands, of all classes of the labouring population (especially at Amity Hall, one to whom all their tales of grievances were accustomed to be made known), never heard of this supposed occurrence until March or April last, after the same man Manning, with Anderson, had got the rumour current; and, stranger still, above all, that, although Mr. Harrison was in the almost daily, if not hourly, communication with the same nine men of Amity Hall (the grave-diggers, who are said to have buried the three prisoners alleged to be shot), he never heard from any of them this tale; but they, without any cause whatever, kept it from him, their friend and benefactor, as a most profound secret; not till September 1866 did even they, for the purpose of exhumation of some bodies or other in an old burial-ground, venture to say one word about this their tale of horror.

Fortune favours the brave. So it did the promoters for the prosecution, on their road in St. Thomas-in-the-East, in September, amongst the peasantry; but fortune is fickle, and may turn towards me.

What are the characters of the principal instigators of this conspiracy; and, to use the language of an Attorney-General in England, "this traffic in testimony" and dates. Who is George Manning? Why, a fanatical demagogue and disturber of the lower classes of the people. Who is Anderson? a flogged rebel, and a fanatic; a man who swore that he had forgotten all about the matter; but he "prayed to the Lord, and the Lord revealed the facts and the dates." Who is Cecilia Robinson? The records of the evidence will tell whether she was brought before me for robbery. Duany admits himself to be a poor illiterate fellow, scarcely able to read or write. Who is Donaldson? The Court remembers its severe censure on him for the motive by which he appeared to be actuated in giving his evidence. As to Bryan, the custos of Saint George, Mr. Hosack has told the Court what is his character. Had Dight, the book-keeper, not been too ill to travel, the Court would have heard of Bryan more. Besides, if the medical evidence be correct, that the injuries were received on the front of the head, then Bryan's evidence, that the prisoners' backs were towards the soldiers when they fired, is a gross exaggeration, if it is not positively false. As to poor Harriett Warren, her pretended husband, who, she swore, could read and write, turns out to be wholly unable to write, and to be, not her husband, but her paramour. Are not the rest misguided frequenters of Manning's shop, all living in Manning's neighbourhood, some his servants or under his control, easy of access, too ready to listen to their native Baptist parson, Manning; their native Baptist teacher, Anderson, and only too ready to do as they are bid, so as to make up any story of cruelty and oppression. How easy to concoct a date and apply a few facts, if ever any existed, with other suitable additions, to keep "all in the head," to get it taught like a parrot.

It is a matter worthy of consideration that none of the alleged grave-diggers (who were Amity Hall people, and not so much under Manning's control) venture to speak to any particular date of the burial, some not the month, some not the year.

Appendix (M).

As to the recollection of dates, take the evidence of Peter Phillips :—

Q. "Why cannot you tell the beginning of martial law?—*A.* Because I did not date it.

"How do you remember it was the 21st, if you did not take the date?—I took the date after, but not at the beginning.

"When did you take it?—On the 21st October.

"Did you take the date on or after the 21st?—On the same 21st.

"Why did you take it?—On purpose to remember when the men were shot.

"At what place did you take the date?—In my own house.

"On what day?—The 21st.

"Where is the book or paper on which you took the date?—I did not keep any book, as I can't write; I asked the white people what the date was; they told me, and I held it in my head.

"What day of the month is this?—I cannot tell, because I have not considered it at all.

"You said you considered the day, and asked white people; who was it that told you?—Charles M'Dermott, one of the book-keepers on Duckenfield Estate.

"Did you ask any white people to tell you the 22nd, and who were they?—Yes, I asked Mr. M'Dermott; he told me both dates; I kept them in my head."

Now, Mr. M'Dermott swears he was absent from the breaking out of the rebellion until the 28th of October 1865, and denies ever having told Phillips any date at all, knowing nothing of the matter himself; and Manning swears that if Phillips swore, as he did, that he, Manning, was charged in the presence of Mr. Sinclair with having been concerned in the rebellion, he swore falsely. Who, then, is the liar on oath: Manning himself, or Manning's witness, Phillips?

Take the evidence of Robert Speed :—

Q. "You swore on Saturday that you could not tell the month in the year; you were sick; how was it you were able to pick out the 21st October last year as being the exact day of the month and the year in which all this happened?—I know it so far at the time the three men were shot by the bridge; I knew the exact day of the month; I was obliged to know it, because I carried it in my head all the while; but the time I was sick I did not know the exact day of the month.

"What day of the month was last Saturday week?—I did not much particular about that.

"What was the day of the month of last Saturday?—I don't know; I was not much particular what day of the month last Saturday was, but I was very particular with the days in last year, October 21st and October 22nd. The 21st was a Saturday, and the 22nd Sunday.

"As a constable, you surely know what day of the month and day of the week martial law left off; tell it to the Court now?—I think it was the end of October, but I cannot really say the date of the month or the day of the week.—(Really the middle of November.)

"You are a constable; tell the Court what day of the week and date of the month the rebellion broke out at Morant Bay?—I think it was a Saturday, but I don't know the day of the month."—(It was not a Saturday, but a Wednesday, 11th October 1865).

Take the evidence of Syphax Wills, and you will find his reason for knowing it was the 21st October was because he heard the parson give out that the Sunday previous to the 21st was the 14th, it being apparent to the Court that the Sunday was neither the 14th nor 16th, and it being in evidence (if this was his mode of ascertaining the date) that the fact is that there were no places of Divine worship opened during the rebellion, the clergymen being (except one of them, murdered) all refugees in Kingston.

Take the evidence of the six persons who spoke of the burial of these three men alleged to have been shot, and you will find (with the exception of Thomas Wedderburne, who only spoke to the month and year, though he did not know the precise day; and of William Huntingdon and William Barclay, who also spoke as to its being last year on Sunday), that none of the three others knew the month, the day of the month, nor the year.

As to Richard Taylor, he states he assisted in the burial of the three men during martial law, on Sunday; but he swears to neither month nor year.

As to Nathaniel Wilkie, he states he did so in martial law, and only so.

As to Zachariah Bayley, he states it was on a Sunday in martial law; no more.

Then take the evidence of Harriett Warren, and can the Court, however charitably disposed towards her, reconcile her knowledge of dates with truthfulness on her part, when she swears in precise language that she could remember that these bodies were buried on the 22nd October 1865, at ten o'clock, and yet she could not tell when the bodies were exhumed, though present, as she says, and it happening on the 26th September in the present year, but scarcely five or six weeks ago! To use her own words: "I cannot recollect the day this month when I went to see the grave; I recollect the 22nd October was on a Sunday, because I was going to church! and as there was no church, I turned back, went home, and took off my clothes!" and that her husband (without any cause or reason), who she says can read and write, put it down on the Sunday. Her husband is not produced, though he could read and write, and though a few days before she came down the date was still preserved on the piece of paper (for she saw it, she says); she, however, cannot read

read or write, nor for recollection read that paper! What is the real truth? Harriett Warren has no husband; she lived during martial law, and lives, with a man who certainly cannot write.

If all these witnesses had been told to swear that the date was the 1st April, can the Court now doubt that it would have been done with equal recklessness and facility of remembrance?

Having regard to the utter impossibility of any reliance on the fallacious attempt to fix a date from over 13 of the witnesses at least, let the Court be pleased to consider the utter subversion of all experience in its believing that, even to these people, events of 12 months' standing are more easy of recollection than events of 30 days; that ignorant people alone, in the time of wide-spread confusion, terror and anarchy, should have had their intellects so wonderfully clear and lucidly distinct, that dates remained impressed on their minds; and yet, in calm periods, subsequent dates of importance and notoriety are absolutely unknown or forgotten. I rest assured that this feature will be regarded as most striking, as evincing an attempt to make ignorant people fix this particular date on which I happened, in the discharge of my duty, to be at the post-office, as being the day of the commission of this crime.

With regard to Samuel Bryan and the constables, is it so plain, and without doubt, that even they all speak of the same identical day. It is certain, from their own evidence, that they could not have seen the soldiers actually fire, and also that they did not remain at the spot that day after the prisoners had been taken out of their custody, and, as two of them state, the three returned at the same time to Golden Grove.

As to the witness Francis, who is said to have made his escape, he may with all truthfulness have been a prisoner at some other day, and at some other place; he, however, never saw any prisoners shot. Cornwall, a witness for the prosecution, was present, but saw no prisoners and no shooting; if indeed that day was the day, and that place was the place. He delivered his account—strange that he should do so?—at the post-office, miles off from his own shop, on an unexpected halt.

With regard to Manning, he never pretended to Mr. Lewis in March, that he ever himself saw any shooting at all, or mentioned any particular day, or stated that I was the officer in command, or giving orders. Duany and Anderson never made any statements to Mr. Lewis; and as to Manning, Anderson, Duany, Donaldson, and Cecilia Robinson, can the Court doubt that they did not and could not actually see any shooting? First, they could not; for they state themselves that they did not leave the shop; and secondly, because they could not (if Harrison, Chisholm, Sinclair, Watson, and Dr. Anderson are credible witnesses) possibly from that shop, or even from abreast the Iron Bridge, see what was going on at the bamboo, opposite the bamboo rail, or the bamboo rail fence, in the logwood fence, on the Holland Bay-road, in consequence of the height and width of the logwood fence last year. None of these same witnesses (for the prosecution) pretend that they were ever at the draw-rail on the Sunday morning at or about the digging of the grave.

As to all but one man, none of the witnesses who alleged that they saw the bodies on the bamboo rail on the Sunday morning (if indeed they went there at all that day) were at the post-office or grass-piece on the preceding Saturday, so as to see any killing by soldiers of any such persons.

It may be said that though people in the lower classes of life might not remember dates, they would remember "Saturday and Sunday" in martial law; but then, to be of any force, it must be the particular Saturday and Sunday of the dates mentioned. It may be, that for the purpose of fixing this charge on me, a Saturday and Sunday have been selected, as well as the only Saturday on which I was known to be at the post-office; but there were besides, several other Saturdays and Sundays during martial law; and moreover, it is quite clear that none of the witnesses knew when martial law began or ceased.

I would urge the Court to reflect that well-known text-writers and judges have constantly held out the warning that "experience teaches the danger of relying implicitly on the evidence of the most conscientious witnesses respecting dates, days, loose conversations, and questions of identity."

I invoke the Court solemnly to consider whether it is not most suspicious that persons who in the most ordinary circumstances of life are utterly unable to speak with any degree of accuracy whatever as to the dates of the commonest known events, or of the details of even most recent facts, should now, though six months or twelve months have elapsed, swear with such extreme positiveness, precision, and minute detail, as to these occurrences, long past and out of intimate recollection; and also be found each and all (especially those under the control of the principal witnesses) to tell their story in several batches as to several parts, the same the one as the other, in all minutest, harassing particularity and sameness.

How is it that each can remember and tell the 21st October 1865, the names of Dr. Morris, Corporal Hunter, and mine (men whom they never knew before), of the very identical spot at which each and every one of them was, to a whisper; even to brains on a sword (when Hunter wore no sword); even to the word "Tue" (such a word soldiers were not accustomed to use), and to using certain language to a prisoner; even to a man saying he would go now and eat his breakfast. It is what one in my position may not unfairly say, but the necessary making up of the concocted tale of perjury, "distorting the truth," "accumulating the lie," "piling a pyramid of calumny!" the only tittle of truth being my presence on a certain day with soldiers at that post-office on this march. Had the

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name of Lieutenant Adcock been necessary for the tale, might not the same use have been made of his name? Yes. Oh! let the Court but remember that George Manning, the local preacher, was charged as being a rebel while this same detachment was there; that he had to fly for his life. Let the Court remember that Anderson was a half hallucinated Baptist teacher, who had been flogged; that both of them were political and fanatical demagogues, with others who have gone to their account in St. Thomas-in-the-East; remember that these men may well have considered they had cause for revenge, and may possibly have been urged to that revenge by interested and better educated men in March last, and that no one person could have been found more happily to fit this tale than myself; the one best known as the officer who was probably longest about Golden Grove with black soldiers; the one who, with Dr. Morris, was pointed out all along to others by some who may have known me in Kingston and Spanish Town, as I came along to and up the steps and hall of the Council Chamber, as the one rumoured about. Thus can you, Mr. President and gentlemen of this honourable Court, perhaps only thus, properly understand and estimate this hazardous and shameless traffic on the ignorance and passions of persons, the too ready tools of such men as the so falsely called "friends of the people."

Is the cry for my everlasting shame, or rather living death, so great in these days of false philanthropy and aped humanity, that I must be a victim? Is the honour of the service to which I belong to be brought to such a pass as this? God forbid it! your finding will, I earnestly pray, prove that it will not.

Let me call the attention of this Court as to what any one who has listened to or read the cross-examination of the witnesses for the prosecution and the defence will readily, perhaps, conclude. The Court cannot but have noticed the contradictions and prevarications (and the "non mi recordo") of the witnesses for the prosecution; and manifest as have been the different statements of some of them before the Royal Commissioners, compared with those sworn to before this Court (which would have been rendered more glaring had I been able to produce the shorthand writers from England, or an absent witness, Mr. Walcott), the Court must have perceived the very suspicious complicity of all the witnesses for the prosecution. Can any such remarks be fairly made of the evidence for the defence? Surely their evidence has been straightforward, positive, and clear. It might appear, perhaps, that Hunter and Wolstenholme contradicted each other, Hunter stating that Wolstenholme went with him from the post-office to Golden Grove; but it is doubtless true that Hunter only went, and that Wolstenholme remained; the mistake must have arisen from the fact that Wolstenholme was with Hunter from Manchioneal to the post-office. Again, another witness, a private, says Hunter remained at the post-office, for he saw him after he came from bathing; that may well be; for as he went to bathe immediately he arrived at the post-office, and stayed no time, he may well have afterwards seen Hunter, and yet Hunter may have, after that, as several witnesses proved, gone on to Golden Grove before me and the main body. Conclusive, however, are all upon the same point, namely, that no persons were shot from their arrival at the post-office that day to their leaving it for Golden Grove.

If the prosecution disbelieved the soldiers, why not have cross-examined them as to the absence of Corporal Hunter and the alleged killing of prisoners?

It is a matter worthy of comment, that, on the cross-examination of the soldiers, not a word was asked as to the actual offence now charged, the one main point solely in dispute; the whole tenor and purport of the prosecutor's cross-examination of the soldiers, and of Berry and Drysdale, negatived the testimony of his own witnesses as to their presence at the shop on the day in question. Thus has he himself furnished evidence for the defence, to the effect that, though his own witnesses may have been present at some other time or day, and then seen prisoners brought to the neighbourhood, they were not at the post-office on Saturday, 21st October 1865, during that march.

Is it not also remarkably singular that all these witnesses to the same Saturday, 21st October 1865, though living near by this shop, the post-office, on the highway, and all in the same district, should have chanced to stop and assemble together only on this particular Saturday, while they, at the same time, state that they never had been in the habit of meeting together on other days as they did that day. The presence of black soldiers at such a time would rather have kept them away; as, indeed, Captain Astwood states was the effect.

One of the strong points brought forward by the prosecution is, that Corporal Hunter, on that Saturday, 21st day of October, had charge of the prisoners, and took them down to be shot, and was dabbling in brains with a sword, which is highly improbable, if not impossible; and although, indeed, he really had no such relation, a convenient fair cousin (following the French expression) is found in Eliza or Elizabeth Phillips for him. As if to lend colouring, currency, and weight to the story, his own cousin is called, and says that he, on that day, boxed one of the alleged prisoners, and therefore he must have been there on that day, because his own cousin so swears. What a cunning and deceptive device! If, however, this principal point as to Hunter be utterly falsified, or rendered so utterly doubtful, what becomes of the rest of the case against me?

Here I may observe that the witnesses who speak as to the orders given, say that the word "Fire" was the expression used. This Court will judge whether it was at all probable that such a term would be used by the regular soldiers, or, if it at all, by Maroons or Volunteers.

Now, what are the real facts as to Hunter's presence on that day? Drysdale, who probably

bably knew Hunter (he had lived in the same parish), did not see Hunter at the post-office when he, Drysdale, came up after the detachment; that Hunter had gone on, is sworn to by Wolstenholme, and three or four others, who most positively stated that Corporal Hunter was sent forward with a section of the men about 10 to 15 minutes after the detachments arrived at the post-office, and that he never returned that day. Hunter has positively sworn to the fact of his absence from first to last, at least half a mile off, at Golden Grove, during that day from the post-office, when and where he is principally charged with being the chief actor in carrying out the brutalities in question. Lofthouse confirms the fact of Hunter's being seen at Golden Grove somewhat.

It is especially worthy of notice that no single witness for the prosecution pretends to say that Corporal Hunter had a horse, or that these outrages were committed by mounted troops, or that horses were ridden there on the same occasion.

It is the fact, however, and has been proven before the Court by evidence in defence, that the soldiers under my command were almost entirely mounted. Does not this furnish the Court a strong argument that, whatever may have been done on any other day, no such deed as charged was done by mounted troops on the 21st October 1865, and therefore not by me, or in my presence, or to my knowledge?

Is Manning afraid of the Maroons, that he has chosen to identify me with black soldiers?

With regard to what really transpired on that same day on this march, there is the record of my own oath before the Royal Commissioners (at a time when, if I had chosen to lie on oath and confess, all would have passed quietly, and at a time when there was no fear of this prosecution or any inquiry), that no such wanton outrage took place on that day, as it indeed could not any other day, by any possibility, by troops under my command. Such my solemn oath may surely yet be considered not of less value than the oaths of such men as Manning and Anderson, and of those who, perhaps, have innocently been deceived by him into this conspiracy; but, thank God! I can appeal to the testimony of others.

Manning is the only person who speaks as to any particular time that the prisoners were brought in and shot, namely, between 9 and 10 o'clock, a.m. Now, police serjeant Drysdale was there on the same Saturday soon after 9 a.m., and remained till about 10 a.m., and actually saw and spoke to Manning (only two others, a man of the same colour as Manning, and a woman, being there then); the time fixed by Manning is the time sworn to by Drysdale as to his being at the post-office. At this time it is clear that no persons had already been brought in, and that Manning had given no information whatever to Drysdale; it is clear that no persons were then there tied to be flogged or shot; he (Drysdale) went from the post-office towards Golden Grove, passed through the square to Morant Bay, but met no prisoners or constables or book-keepers on this road from the post-office to Golden Grove works, as he must have done if they were at the works or on the road.

It is therefore clear for some little time that, even after 10 a.m., no such persons, prisoners, constables, or book-keepers, were at the works, or on the road, or at the post-office. This period of time is the only period of time sworn to by any witness whatever in fixing the hour of the commission of this outrage. The Court cannot assume any other period of time whatever than that which the prosecutor has proved on oath to make out the charge.

Captain Astwood swears that Mr. Berry and Mr. Brandon were sent that same day from Golden Grove by the orders of Captain Adcock, and at his own instance, to call me up from the post-office. Mr. Berry swears that he arrived at the post-office that same day, about one o'clock, with Brandon (now in England), and that they saw Manning there at his shop; Woolstenholme confirms that statement; he says that two mounted volunteers, dressed as such volunteers were then dressed, did come that day to the post-office. No prisoners were met, or seen, or heard of that day by Berry; and, according to Berry, he and Brandon remained about the post-office the whole time, and returned with me, and the remainder of my detachment and the volunteers, to Golden Grove that same day, I being evidently in his view, or near him, the whole period; so nothing could have occurred between the hours of Berry's arrival and departure without Berry's knowledge. Had anything occurred between 10 and one o'clock (that is, between Drysdale's leaving and Berry's first appearance), surely in all human probability Berry would have heard from Manning, or some one else, of it. Berry, however, has sworn that he on that day heard not of, nor saw, dead bodies thereabouts, although he was actually in the same grass-piece, near the spot where the men were alleged to be tied and shot, and left exposed openly (his attention being attracted to the canes on Duckenfield, looking as if destroyed by insects). It is clear, then, that the alleged shooting of the prisoners, if any, did not occur either before or whilst Berry was there. Let the Court see what becomes of Manning's pretended character for credibility and humanity, when he said not a word about what he must have believed to be a gross atrocity, if it had been true that such an outrage was committed on the day alleged. Manning was in no fear then of soldiers; he told Berry he was glad they had come, for he feared the rebels; he surely, at the same time, would have mentioned the fact of the three men being killed, if it had already occurred, or was about to take place that day.

It is sworn that my detachment and myself remained there at most only four hours; the whole period of time, therefore, is abundantly covered by the evidence of police serjeant Drysdale, volunteer Berry, and the non-commissioned officers and privates, who all most positively swear that no such atrocity was committed that day, the only day, I repeat, on which it could possibly have been committed on this march.

It is remarkable that not one of the non-commissioned officers or privates, except

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Corporal Hunter, has been ever recognised, or charged by the witnesses for the prosecution, with being concerned in the alleged shooting of these three men; none saw Woolstenholme at all. It will no doubt be strongly urged by the prosecution that these soldiers would not be likely to admit my guilt, if any such existed, or to commit themselves. The answer to such a supposition is plain; no one has attempted to doubt that all these men, the soldiers, or most of them, in their sworn evidence before the Royal Commissioners (when no prosecution was feared), made the same statements on the main questions as they have before this Court on oath; they also right well knew then, as they know now, that if they had committed the acts charged, no blame could (as it had not for six months, or even now) possibly fall on them for obeying my orders, or those of Dr. Morris, if any had been given; they know too that this Commission is that of the Queen, held by officers of far higher rank than myself, and, to a certain extent, against one in disgrace; many of the soldiers are black men and creoles; many of the soldiers too are not of my company. The Court knows how much prone human nature is to trample upon a fallen man, or one thought to be so.

Thus, for the period of 9 to 10 o'clock, and 1 to 3 o'clock, in which their testimony is confirmed by Drysdale and Berry (as well as for the three hours, 10 to 1 o'clock), there is evidence of all the soldiers, not reasonably doubtful, to explain my actions, and to remove the foul stain attempted to be cast on me.

I must solemnly appeal to the records of the Royal Commissioners; my plea of Not Guilty, now here recorded, is no mere idle form; it is the deep, bitter, impassioned record of the truth.

The Court will bear it in mind, that although the most strenuous efforts were made in April last, no less than a large majority of the witnesses for the prosecution before this Court have been here for the first time produced, although on the royal inquiry they were all throughout in the same district. What opportunities for Manning and Anderson to exercise the most pernicious influences over these same persons! What promises! what threats! what hopes! what fears!

I would respectfully ask the Court to consider my demeanor and conduct just afterwards, the day in question at Golden Grove. Would the killing of these men have been at the time considered an outrage in St. Thomas-in-the-East? Would it not rather have been looked upon as a matter of conversation and satisfaction, than of concealment or regret, in the then troubled state of the times in St. Thomas-in-the-East. By the evidence of the volunteer officer, Captain Astwood, who saw me on my arrival at Golden Grove, it is testified that I and he most freely and fully entered into conversation respecting all occurrences on the march of that day; but that nothing was stated by me of any such occurrence as the subject of this court martial. Even had I not mentioned it, surely some of the soldiers on the detachment would have spoken of it, if it had happened at all. At that time who doubted aught else but public approbation; what officer then believed aught else than that he had done his duty?

By the same providence which, while this Court was sitting, sent back from Hayti, in the Island of St. Domingo, the witness Berry (whose name had been previously, without avail, sent in to the Deputy Judge Advocate, to be summoned), and had so ordered it that Serjeant Drysdale should, like Berry, have been on the spot on the 21st October 1865, it has transpired that on the 22nd October, the Sunday morning, between half-past six and half-past eight o'clock, at the very time when the bodies are stated to have been still tied to the road fence unburied, a body of troopers under Lieutenant Adcock, with strict orders to look out on either side of their route, should have been on this very road in question. Several of them, in passing the post-office, within 200 yards of the place where it is said these bodies were tied, saw Manning at his door, and conversed with him; but not a word even then from him as to any men being shot, whom he and others (according to his and their account) had stood by, and witnessed the day before; not a word then of commiseration was uttered for these poor miserable massacred beings there tied, cold and dead, food for the vulture; not a humane thought then for those who, by his hypocritical expression of pity and horror, had been, as he pretends, prevented being butchered in front of his own door; not a word, not an act of charity, then from this saintly preacher for those who (whilst he was comfortably sleeping in his house that very Saturday night, he knew (if there be truth in this tale) were still exposed, ghastly chilled by a midnight blast, keen indeed, but not keener than that man's puritanical sympathy, this friend of the people, this minister of God.

Now of the number of mounted troops who passed along this road that same morning, some three or four of the front rank, and some others of the rear (stragglers of the 6th Regiment), mistook the road, and went in the direction of Holland Bay, the alleged scene of this tragedy; some went 20 or 30 yards, some 200 or 300 from the bridge down this Holland Bay-road, and returned; and yet there was nothing to attract their attention; no dead bodies were seen or heard of, although they would have been, if they were there still tied to a fence on the open road, where they still remained, as is stated for the prosecution, the whole Saturday afternoon and Saturday night, and Sunday morning until 10 o'clock. No carrion crows, the well-ascertained scavenger of the dead in this island, were hovering about; no scent issuing from the bodies in a country like this, where decomposition takes place so rapidly before interment that, if a man dies in the morning he must be buried in the evening for the public safety. No eight or nine people with hoes or shovels are seen on their way for the purpose of discharging the last office of burial of these poor men on that same Sunday morning.

What

What motive, may I ask, could induce men like Mr. Harrison, Mr. Astwood, Mr. Brass, Mr. Fowles, Mr. Davis, Mr. Lofthouse, Mr. Berry, and Mr. Watson, and the non-commissioned officers and soldiers of the 6th Regiment, to swear that they never saw or heard of these bodies, or any sign or token of them, or any crows, or of any men with shovels and digging implements, or otherwise, on that same spot or elsewhere on the road, and never heard of any complaint; when, in all human probability, if the fact had been otherwise, they must have seen or heard of all this at the time in question.

I press on the Court with all possible force of language and of argument, not only that the members of the volunteer force could not mistake the dates of the 21st October and 22nd October 1865, because they had to perform duties on each of those days, and records of the times would tell those dates, just with the same truth as the records show that the date of the 21st was furnished for this prosecution; but also (taking one witness to elucidate my proposition, and to exemplify all), that Mr. Watson's evidence is of the clearest, most cogent, and strongest, and convincing nature. He is absolutely confirmed by, at least, four other persons as to the extent down which he went on the Holland Bay-road; as to the day, and the hour, and the particular spot, the bamboo draw rail, commonly known on the Holland Bay-road, and as to the fact, whether or not, there were any dead bodies lying on that road, and then and there tied to that bamboo draw rail, which he well knew, for he actually noticed it at seven o'clock, certainly before 10 a.m. on that Sunday morning; and again in November this year, when he passed the spot on this Holland Bay-road to attend this Court. He is a man utterly disinterested and unprejudiced, except in swearing to truth. Unlike such men as Manning, Anderson, and others, he is a man intelligent, cool, educated, and religiously trained; he is an officer of the Government, and a son of one of the best and most pious of the Presbyterian clergy; he cannot be mistaken by any possibility as to these important facts. I cannot imagine that the prosecution will contend that Mr. Watson with others were uttering a wilful falsehood. Can, I most humbly and respectfully submit, there be any escape from this dilemma if the finding be against me upon this charge, namely, that you Mr. President, and most honourable gentlemen, have implicitly believed ignorant and revengeful witnesses for the prosecution, and that the Court must have arrived (every reasonable man will believe that the Court must have arrived) at the conclusion that Mr. Watson, with at least four or five witnesses on the self-same facts, has, without possibility of mistake (for that is out of the question), without motive, with no conceivable cause or excuse, been guilty of perjury before God and man? Nay, more, the Court itself cannot but most painfully feel that, if upon all this evidence there should result the stern duty of finding me guilty, the whole civilised world would consider (and with reason too), that the Court had been compelled to conclude that the prejudiced and grossly illiterate witnesses for the prosecution could not possibly be biassed or mistaken (even as to dates), and that the Court had, however, reluctantly put aside as impossible of application the golden rule of British criminal law (which seeks justice, but not victims), that everything not clearly proven to demonstration by the prosecution is to be assumed against the prosecution, and in favour of the prisoner, more especially when his character in respect of the supposed crime has been spotless; and, alas! moreover, that this Court with every desire for mercy, had been forced to entertain the belief that not only had all the military witnesses on my behalf grossly perjured themselves, but also that the numerous intelligent and unbiassed witnesses of all the civilians who have testified in my favour, custodes, magistrates, overseers, book-keepers, clerks, custom-house officers, medical men, military and civil, of great research and experience, had without any possible inducement, for a comparative stranger too, grossly conspired in a combination to defeat the ends of justice, and to carry out that object by the most fearful and appalling desecration of the solemn oath, "So help me God!" that ever was, or could be conceived or heard of in any age, or in any land. Such, though mournfully and regretfully, must the Court too well know is the responsibility which rests, not on the prosecutor or prisoner, but upon this high and honourable tribunal. If my language be bold, pardon it from one whose life-long character and lot are staked; pardon it from a young soldier of some honourable aspirations; it doth but ring here full and clear for the honour of the service! But, Mr. President and gentlemen, if doubts are to be entertained as to the testimony of the soldiers, volunteers, magistrates, police, and alien civilians, is not, I would ask, their credibility absolutely certified by testimony which cannot lie, the graves spoken of, and the bones produced.

As to the graves spoken of, Mr. Sinclair, the overseer, was on the very spot within 14 or 15 days in the first week in November last year, and saw no traces there of a fresh-made grave. M'Dermott and Wilson, the book-keepers of this very estate were there at work in December last year, measuring and scything the grass over and around the very spot from that bamboo draw rail, but saw no recent signs of any interment. Joseph Wood in December last year and this year, was on estate's wharf-business, constantly passing by this same bamboo draw rail, and inspecting the grass in this same field for pasturage stock, and yet he did not, and could not see any mound or other sign, as if the place had been recently used for burial; people again were constantly using the same bamboo draw rail as a common entrance, going quite close to, if not over the same piece of ground, and yet nothing is heard, or seen, or known of bodies recently buried there; while at the same time there is abundant evidence that other mounds near to this same hole, and also to this old bastard cedar stump, which would indicate those mounds as well (the whole field having been used at one period for cholera and other purposes in 1850 and 1854), and doubtless, as is the custom of the negroes, where they see other graves, for other

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burials generally from time to time. In March last, Mr. Sinclair and Mr. Chisholm were both on the spot, and ridiculed the farcical supposition that that spot was the grave of three men, who died only in October last year.

Is it at all free from manifest doubt that the grave opened on the 26th September 1866, at the instance of Colonel Daniell, is the grave in which three persons could have been so recently buried? The fact of three bodies having been found without coffins is explainable by the reflection that burial without coffins, and with several bodies in the same hole, was constantly practiced during cholera and small-pox, and other epidemics, and that it is not at all improbable that other graves in the same field may also contain two or more bodies. The bastard cedar stump was there for years, it is no fresh mark, there may be other bastard cedar stumps all over the place; this particular stump was also quite as close to other mounds just about the same spot.

But what is to be said of the fact that there are more of certain bones than the bones required for only three persons, found and produced from the same hole? It was never pretended that four men were buried there, and if this grave had the remains in part, or, in the whole, of four persons, then that spot cannot be the grave of the three persons, nor could these three persons have been the persons buried there.

Again, take the appearance of the bones exhumed, all raked up, piece by piece, from the hole. Rapid as decomposition may be argued, or supposed to be, it must be remarked that there was nothing to attract even crows (before interment). Who can say that these bones were only in the ground for eleven months and four days? Amongst them are parts of the human frame evidently much older, and longer interred than the rest. Is it clear that the skulls of one, or more, do belong to the bones of the bodies produced as being their parts? Is it clear that each set of bones belong to the same individual body? They were all mixed up together! Several bones, nearly 150, are missing, even to make up three complete bodies. There was no hair, or clothing to any perceivable extent; flesh and ligaments, and brains, and all soft animal textures were wholly gone; and the bodies were not in the slightest degree offensive when exhumed by Assistant Surgeon Kerr. The soil is a brick mould mixed with alluvium, tending downwards to sand; it is not dissimilar to any great extent to the several soils in which the rebel, and "Jones," and poor Mr. Hire were buried, and even that of the Reverend Mr. Herschell; the depth of the graves of these remains and that of Mr. Herschell and others were about the same; there is no evidence whatever of any extraordinary causes for discolouration or decomposition. An open field, near a road, high away from the river, and far off from its deep bed is the site of the grave; the bodies are said to have been killed and buried on hot dry days; other graves in the neighbourhood of persons buried about the same time, and in similar soil, still retain some elevation for the grave. Contrast the evidence of the state of the head of the rebel killed, and of Jones, who was hung during martial law, and also the condition of the remains of the Reverend Mr. Herschell, murdered on the 11th October 1865, just on the eve of martial law, with these dry bones, and then the Court can (as it will no doubt do) value the medical testimony!

And then as to the alleged appearance of wounds, not a single bone of any of the bodies is proved to be injured; one skull is wholly uninjured; two skulls have nearly all the sutures separated, and the sides of the head broken with large holes, and all so completely shattered that no bullet could have done it, while one of these two skulls has a hole, which might just as well have been inflicted by a pickaxe as by a bullet; the fractures instead of radiating from the supposed point of impact are parallel to that same point.

Again, is it not more likely from the appearance that all these wounds on the two skulls may have been inflicted after death? Experiments have shewn that similar wounds could be so inflicted after death by bullets on the dead skull.

How is it that all the wounds on the skulls, if inflicted by soldiers standing directly opposite only 9 to 11 paces, are confined to the left sides of the head and not on the front or back of the heads?

Can the Court believe that if 5 or 10 men, armed with Enfield rifles, were firing at three men tied opposite, from only 9 to 11 paces on a level ground, at a regularly marked space inclosed on both sides, and aiming, as soldiers are taught, at the head or breast, that the injuries inflicted from at least 20 or 30 shots fired, would have been so few on the skull without any serious injuries on the breast or rest of the body? Who is positively to say whether the wounds were inflicted by a spherical or a conical ball, or by a ball at all? If they were by a spherical ball or by the ball of a revolver, then the soldiers did not commit the outrages.

Now, under the circumstances of the supposed identity of the graves and bones sworn to, with the graves and the bones of the three men in question, negatived as all such supposition as to graves has been by their appearance in November and December last, and even in March this year, and by the testimony of the overseer and book-keeper of this very estate, Duckenfield, in which the bodies are said to have been buried, negatived also as to the bones produced by their own appearance of different periods of interment, both as to the whole bodies and as to several parts of the self same bodies, and by the almost unanimous testimony of five men of great medical and surgical experience, and admitted to some extent by the only medical witness for the prosecution, is the Court so well satisfied that the grave spoken of is the grave of these men, or that these bones produced are the bones of Walton, Bell, and M'Call?

The Court itself by a question put by the President, after the witnesses as to the identity of the three prisoners said to be buried on the 22nd October had for the prosecution been examined

examined and the case closed, asked of M'Dermott, a witness for the defence, if he had seen these same men lately; and the Court will remember the answer of the witness as to the migratory character and habits of such persons in that class of life, and that they never remain constantly on the same estate or in the same neighbourhood! And the Court may easily conceive that persons, who had been in any way concerned in plunder or rebellion about a particular district, would, as in numerous other cases, be but too glad to leave the same neighbourhood or parish. This, however, is clear that M'Dermott could not swear that these men were dead, nor indeed could the bookkeeper Bryan, Cyphas Wills, and Colson, who say they took them to the Post-office, and then returned; most certainly they never actually saw these men shot; nor did Manning, or Anderson, or Cecilia Robinson, or Donaldson, or Elizabeth Phillips, or Duany, or Isaac Cornwall, or Clarke, or Bayley, or Francis, or Speed.

The two men, William Barclay and Zachariah Bayley, who swore they came by next day, saying that they saw the bodies tied to the bamboo rail, never pretended that they were about the spot on 21st October, or that they stopped to examine any dead bodies in face, or body, or clothing, or age, or height, or any mark whatever, or that they went close up to the men with their heads lying downwards. All they did was merely to peep as they passed along the road; the men, who came to bury the three men, never pretended that they were shewn the bodies, or that they were sent by either of the two men, who have stated that they passed by on the morning, to bury these particular men (entirely unknown to five of the six grave-diggers, either by name or otherwise); they broadly state, not that the bodies were pointed out by soldiers, but that they were sent by two soldiers (met somewhere by the Amity Hall-road) to bury some men, but when, but where, but whom they swear not at all; they don't pretend that the soldiers ever mentioned any names.

May I not fairly ask (considering the lapse of time since it is alleged that this outrage was committed), may there have not been a confusion of times, of persons, of places, of facts, and circumstances, and events, in the minds of ignorant witnesses, blending all in a strange medley of ideas, and remembrances, not only pieces and parts of totally different and diverse occurrences, but also names and identities of persons; and may it not thus have resulted that certain persons, not being seen or found (and it being politic, if not necessary, to make out additional cases of barbarity on the part of the soldiers, by those whose special mission it was to "pile horror upon horror"), the names of these particular persons were thought convenient to suit a preconceived idea and intent; and, as at Monklands and elsewhere, to exaggerate the slaughter complained of?

The Court must remember that, at the time spoken of, these three men were working at Duckenfield; the people who are called about the place of burial all come from Amity Hall.

How is it that not a single relative of any of these three men (two of them creoles) is called before the Court, except, indeed, a woman, who was not his wife, but his mistress, and who makes no attempt to identify him, and who had not seen him for a few days before.

Is the Court aware of a fact, almost now historical, that of the numerous charges of murders brought against the soldiery about St. Thomas-in-the-East, as of persons killed, many persons, whose names were sent in and sworn to before the Commissioners as dead, were afterwards, during the course of the inquiry, found to be alive? The Commissioners' Report could tell that. Mr. Commissioner Maule, might, were he here, tell this Court what transpired at Monklands and Morant Bay.

But, oh, astounding identity! Proof positive! Behold and wonder! In the same (old cholera) grave, olden, rotten pieces of leather belts, 'bacco pipes, odsfish, and buttons! Prodigious! Therefore, what unbeliever can be found to doubt that such men as M'Call, Bell, and Walton are dead, and that these things were there on their bodies at the time of interment? Nothing whatever caps the climax of such a notion of identity but the notion entertained on the part of the prosecution as to "rigor mortis!" But, moreover, if in addition to all these facts, the Court takes into consideration that the remains of the dead bodies themselves give no clue to identification, and that Mr. Watson and others are worthy of belief, in stating that no such persons were to be seen at all, dead or alive, on that Sunday morning, can the Court not well come to the belief, that the question which it put to, and the answer it received from, M'Dermott furnish abundant ground for reasonable doubt as to the identity of the men, of their being alive or dead now? The legal presumption is of the strongest possible nature in favour of the existence and duration of life, even in some cases for seven years, and upwards, too. The annals of crime have furnished instances far more passing strange than even the records of this trial. And the Court would not be astonished to find that professional men can tell of a reported case (amongst other marvellous instances in which innocent men have been made the victim of circumstances), in which an uncle, by making use of angry expressions on beating his niece, was put on his trial for her murder, and subsequently tried; and partly by acting strangely on his defence, was convicted and executed in England. The niece, who had fled from his roof, could not be produced before he paid the penalty of the law; but yet she was afterwards discovered alive, when he had been deemed a murderer and was dead.

In regard to the medical testimony, I crave the patience of the Court for some necessary comments most material for my defence. As to the statement of Assistant Surgeon Kerr, on his being recalled by the Court, about the small bone, No. 1, corresponding with the

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the anterior superior spinous process of the ilium, I would remark that in the three bodies the anterior superior spinous processes of the ilium of each body will, as I am informed, be found on examination of them (and especially if Drs. Bowerbank and Anderson had been recalled on the point by the Court) perfectly complete in themselves. I would also observe, as to the same bone, No. 1, that the same medical gentleman could have satisfactorily explained the similarity of the edges of the pelvis, pointed out by Dr. Kerr, and produced on his recall by the Court. The Court, perhaps, itself may entertain some doubt about the similarity, when it remembers the different colouring of the pelvis and of the bone, No. 1; the more so that Dr. Kerr himself doubted whether the bone, No. 1, did belong to any particular pelvis; the Court may possibly see that the pelvis produced is not wholly fitted by piece, No 1, but is in itself perfect, if allowance is made for worn edges.

It might certainly strike the colleges of physicians and surgeons as singular to call "adipocire" " brainy matter," merely to avoid the use of technical terms, or to account for the discolouration of bone, deeply and darkly discoloured, merely by "handling."

The Court, it is humbly suggested, will not thus have failed to see the great danger, and possibly injustice, of permitting evidence in rebutter on the part of the prosecution only, as so only it can be, after the case for prosecution and defence have been closed, without the power of calling witnesses in answer to those called in rebutter for the prosecution.

Upon certain principal points five gentlemen (not to mention Dr. Morris), judging from their skill and past experience, as well as former and recent actual experiment, and having their conclusions confirmed by some of the eminent writers on medical jurisprudence, and on gun-shot wounds, have generally agreed in regard of these bones. They state, on the whole—

First. That the bones produced must have been in the ground for much longer period than 11 months and four days, the time of the alleged interment of the bones, said to be bones of men killed on the 21st and buried on the 22nd October 1865, and exhumed on the 26th September 1866.

Second. That some of the bones have been longer interred than others.

Third. That some of the bones put forward for the same body are evidently older, and longer interred than the rest for that same body.

Fourth. That some of the bones produced for one body do not fit that body.

Fifth. That agreeably with the testimony given by Dr. Kerr, in relation to the state of the bodies and otherwise at the time of exhumation, on the 26th September 1866, they, on the 31st October 1866, found no perceptible clothing or hair, except a small quantity adhering to the bones; no flesh, no ligaments, or even dust of ligaments, in the boxes, in which the bones were originally placed, and no offensive smell, even on test.

Sixth. That the injuries on the skulls may have been inflicted after death, and that similar wounds have been so produced.

Seventh. That the injuries on the skulls may have been produced by other means than bullets, or than by a conical ball.

Eighth. That the sharp edges on the holes must have been done less than 11 months ago.

Ninth. That considering the position of the wounds on the skulls, one of them may have, and the other probably has, been inflicted after death, and while the body was on the ground, or by a person standing right over the body; that the number of persons said to have been firing at only 11 or 12 paces on the same level could not have produced such a damaged and fractured state as the skulls present.

And, Tenthly. By the three who made by far the most minute and carefully-studied examination for days, that more than 140 bones are wanting for three bodies (from which evidence Dr. Kerr, when recalled by this Court, does not materially differ, if at all), and that there are also three bones for a fourth body.

It will not be forgotten that, in arriving at these conclusions, the medical gentlemen have made every allowance for absence of coffins, for soil, climate, depth of grave, and also all decomposition arising from whatever source, tested in every one of these respects by the exhumation of bodies in nearly similar soils, without coffins, and of almost similar duration of interment and character of climate.

The whole of the medical testimony, in its main points and in its bearing and force, has remained utterly unimpeached, if it is not indeed corroborated, by the sole medical witness for the prosecution, Assistant Surgeon Kerr.

It may be said that these are all mere opinions, but that would be positively incorrect on the whole.

Facts are spoken to by them both with regard to the graves, the exhumation, the subsequent examination, the decomposition, and the number of bones, their actual appearance, and their want of adaptation to each other; these matters, though sworn to by medical men, are yet as certain indubitably existing facts, as is the fact that this court martial

martial is now sitting in this room, and giving its earnest attention to my defence at this very moment. There are, it is true, some opinions, but let me ask whether upon the faith of two or three loose words published in a slip-shod style in a text book, as to the weight of opinions of skilled men, this Court is prepared to place little or no reliance on the testimony of Drs. Bowerbank, Street, Dunlop, Manners, and Dr. Anderson, and to some extent Dr. Kerr; interwoven with and fortified as all those opinions are by the intrinsic and extrinsic evidence of positive unmistakeable facts? I cannot presume, Mr. President (with all possible respect), that this Court is prepared to do what the Judges of Westminster Hall never yet I believe have done, namely, to slight if not ignore the medical opinions of men experienced in and out of this Colony. I feel assured that such testimony will be allowed to influence your decision upon a crime highly penal by statute law. To use the language of a writer on medical jurisprudence:

"It is by such testimony in courts of justice that fraud and violence are detected, unmerited infamy and death prevented; the widow and the orphan saved from ruin; virgin purity and innocence vindicated; conjugal harmony and happiness restored; unjust and oppressive demands obviated, and sources of public and private misery removed." Regard, I pray you most humbly, what takes place in the courts of assize in England, and the reliance there placed upon the testimony of medical men of great renown; and then I do but request of you that, with reference to the medical evidence before you, Mr. President, there should be placed as much reliance and credit as (and no greater than that which) it would receive had it been given before judges in courts of justice in England and in Europe.

Before I conclude my comments on the general testimony, I wish the Court to remember that if they entertain a reasonable doubt that these bones were in the ground for 11 months and four days only, then it must most necessarily conclude that these are not the bones of bodies killed by soldiers under my command on the 21st October 1865, and buried on the following day; and if there be a reasonable doubt that the bones are the bones of the bodies of the three men, the subject-matter of this prosecution, I would appeal (if not to the generous condemnation) to the dispassionate judgment of this tribunal, and ask most solemnly what opinion is to be formed of the reliability or credibility of the testimony of those who have had the temerity and audacity, or call it rash and reckless ignorance, to go to a common burial ground, and there pick out and swear to a particular spot as the grave in question for these three men, because they might have known or heard that some bones were going to be exhumed as evidence in this case, and also of the practice of burying three bodies together, and even sometimes more (as Dr. Bowerbank says during epidemics); or what does the Court think of those who, because they might have heard or known that other different persons were killed and buried there in a grave, have put in a second or a third body (not injured) to make up the number of three bodies; or yet of those who might have searched for an old grave with two or three bodies in it, and then because there was an old bastard cedar stump there to give a colouring, as of truthful identity to the spot, have sworn that it was the identical spot marked at the time of the supposed burial a year ago. Nay, what is worse, if the Court may suspect that it does reasonably appear that these two wounds were inflicted after death, and that all the bodies were not really buried on the same day; and yet in a criminal court judges and juries are bound by the laws which they administer, to presume everything against the prosecution, and against the guilt of the accused, everything in favour of his innocence; not only, too, must the evidence be found to be wholly consistent with guilt, but totally inconsistent with innocence.

Thus, I submit, have the principal points for the prosecution, viz., the shooting on the 21st, Corporal Hunter's conduct and presence on the 21st, and the exposure of the bodies till the 22nd, been most conclusively answered.

If, indeed, there can be any possible difficulty in the mind of the Court as to a finding in my favour, I would respectfully refer to the well-known doctrine of law that evidence of character is most valuable, where the probabilities of guilt on the one side, and the probabilities of innocence on the other, are nearly equal; and that in such case satisfactory evidence of general good character for humanity may have the effect of raising a well-founded presumption in the minds of the Court, that a man of such character could not have been the perpetrator of the crime of wanton violence imputed to him, and that in this sense it may be deemed evidence tending to the disproof of the charge or crime.

May I not, with pardonable pride, refer to the testimony of such witnesses as Mr. Harrison, Mr. Chisholm, Mr. Sinclair, Captain Astwood, and of my own superior officers, Captains Hole and Ross, and Lieutenant Ballantine.

Mr. President and gentlemen, I have not shrinked inquiry from every source. I have thanked you, and I still most deeply thank you for your indulgence; but I have claimed nothing to which I was not most conscientiously advised that I was strictly entitled to in the ordinary courts of justice in British tribunals. It may be that you think that I have called more witnesses than need be; I have only done so with the view that no one could honestly hereafter say, "Why was not this or that witness called?" The Court sees that I have done my utmost to obtain the evidence of the soldiers who went to Africa, but delay might have ruined my health, if not that of every member of the Court, two of whom have, I sincerely regret, already suffered.

The Court will doubtless bear in mind, that about the same period, the 21st October 1865, numerous bodies of the regular troops, volunteers, and Maroons, were all about the vicinity; nor will it forget the evidence given as to constant complaints of straggling of

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soldiers, and the difficulties of keeping the men under control; but God forbid that in calling your attention to this portion of the evidence, I should be deemed to be pointing to any one as having cruelly and wantonly committed the outrage charged; let me bear the stain, 'twill soon be wiped away. Gold plunged in the deep but comes up the brighter.

But nevertheless, if any of them had been accused of this charge, and if any of them were on their trial now, they might remind you that the whole common and statute law was suspended; that a state of warfare and anarchy existed: that the strongest minds of men the most humane were unhinged by the fearful state of alarm and terror which prevailed wide-spread throughout the Colony, and that it was absolutely vital to do the best (though possibly the most ill-judged, cruel, and illegal that could be) for the sake of the public, and of the lives of the defenceless few loyal people from an overwhelming majority of rebellious subjects, and to use such extraordinary means as would be urgently necessary to quench the flame of savage, demoniacal plunder, butchery, and murder, and rebellion that revelled and swept through St. Thomas-in-the-East; they might tell you that during martial law, plundering was aiding and abetting rebellion; that rebellion was treason, and that treason was death. They might well point to men and women and children flying for life, almost naked, cold, and famished, to properties devastated, and to the blood of the best and the noblest of the land, all gashed, stark-naked, and dead; and to the terrible fate that women dreaded. They might tell you that some of them were young, inexperienced, without instructions for any emergency, and in a situation distant from assistance and advice, and that their numbers were as the few against the many; and that under them were men reckless, ferocious, disorderly, and uncontrollable; and that, therefore, under all that concentrated horror, overpowering feeling, mind, body, and action, they could not be condemned, because of mere illegality, or mere cruelty, such as exist in time of peace; and if a young inexperienced subaltern were amongst them, one sought to be made a victim to the passions of a populace, he might even tell this just and merciful tribunal that judging in time not of war, but of peace, it ought to be, as it wishes to be, dispassionate and considerate, and to realise if possible that state of terror and rebellion, and to bear in mind that such a charge, so penal in its condemnation to a living torture as this, of wantonly causing death, must receive a strict judicial construction under the statute, and must not be evidenced and judged by bare omission, or neglect of duty; but by some positive direction, command, or act expressed or implied (which this prosecution does not disclose), and he might ask what less worse, older officers would have done; and he might refer to the language of the great Lord Mansfield:

> "That in trying the legality of acts done by military officers in the exercise of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright; and it is the same when complaints are brought against civil magistrates, such as justices of the peace, for acts done by them in the exercise of their civil duty, and that there the principal inquiry to be made by a court of justice is, how the heart stood, and if there appears nothing wrong there, great latitude will be allowed for misapprehension."

Again says his Lordship:

> "We enter into all the difficulties in the situation of an officer, whose honour and fortune may come to be so staked. In this particular case they have had their weight with us; the decision has not been a hasty one; but considerations of this nature cannot exclude the established jurisdiction of the country; on the contrary, these jurisdictions must be presumed to be equal to their functions; it must be presumed that they will do their duty honestly; if they do, no man can have much fear. To situations which require indulgence they will show it, but, be the risk more or less, all men hold their situations in this country upon the terms of submitting to have their conduct examined into, and measured by that standard which the law has established. Men of honour will do their duty and will abide the consequence."

For myself, the defence put forward by me is the same as that which my oath before the Royal Commissioners testified to at a time when I feared not this accusation, or this prosecution, but sincerely and honestly thought all that I had done was but my duty to the Queen.

May I not well contrast Colonel Daniell's position as prosecutor with mine as a prisoner? He has on his side the name of the Queen, the prestige of the Attorney General, and the aid of an old clerk of the peace; he has had all the means and opportunities of time, money, and influence, and of his own high rank. What weight may not all this have exercised upon the minds of the witnesses for the prosecution. On the other hand, I am but a young ensign, under arrest, without influence, scarcely able to defend myself, but for the generosity of some and the kindness and forbearance of others. I was, during martial law, in a position directly antagonistic to the feelings of the lower orders, and to some of these same witnesses; I am regarded by them as a man set up, even as though by the Queen herself, as a mark for their vindictive clamour and revenge.

For the honour of the service to which I belong I do not complain of this inquiry; but I do most bitterly complain of the character of the witnesses who have been arrayed against me on the part of the prosecution; and that Colonel Daniell, innocently, indeed,

(for

(for he knows, and can know but little of the lower orders of this Colony, particularly as regards circumstances during the rebellion) has been induced, if not compelled, to rely on them for the maintenance of this charge. I feel, however, satisfied that, if you, Mr. President and the honourable members of this Court, and he, could by any possibility, obtain an intimate acquaintance with the motive, true nature, and real value of such testimony, there would never be again put in peril, with your or their sanction, the character of any young officer or the honour of the service upon testimony so little trustworthy. Appendix (M).

Almost broken down with a fever of anxiety on this most terrible ordeal, I am buoyed up by a sense of the generous conduct of those who have so nobly come forward to befriend me, for the honour of the service, by the hopeful prospect of the fulfilment of a glorious object, the unsullied honour of our common profession, unsullied by me, and by the cheerful consolation that, when, as members of this Court, your momentous and painful duties under Her Most Gracious Majesty's Warrant shall have been discharged, you, Mr. President, with each Member of the Court, and Captain Maclean, and Colonel Daniell also, will heartily join with the rest of my comrades in congratulating me on a safe encounter against the perils to which this harrassing prosecution has but too painfully subjected me. Though but an ensign, I yet (somewhat in the words of Major General Sir Richard Airey on his trial before the board of officers at Chelsea) can say:

> "I also have learned what it is to be engaged, day by day, and week after week, in that bitterest of human duties, the duty of testifying one's own conduct. I have learned from the example of as able a soldier as ever commanded the British army in the field, that it is one of the duties of an officer in these modern times to bear injustice from many quarters with a long-enduring silence, and to regard all obloquy, and all unfounded blame, very much in the light of those more physical hardships which are the part of a soldier's lot. Therefore, Mr. President and honourable members, without dwelling on the hardships which may be thought to attach to my position, I solemnly commit my reputation as an officer and the fair name of every British soldier of Her Majesty's service, to the pure, fearless, and dispassionate judgment of this high military tribunal, and I do so with full confidence that the very words of Her Most gracious Majesty's Warrant will be fulfilled to the letter, and that, accordingly the truth will be made manifest, and justice done to all."

F. J. Cullen, Ensign,
1st West India Regiment.

(N.)

PRISONER'S OBJECTION to reception of REBUTTING EVIDENCE by PROSECUTION. Appendix (N).

CONSIDERING that the bones were produced on the part of the prosecution, with all injuries and marks, and appearances on them in the state in which they were at the time of exhumation and examination, as part of the evidence for the prosecution; considering too, that one medical witness has been already examined for the prosecution, as to the exhumation and the then state of the bodies, and also that other medical witnesses for the prosecution as to the exhumation of these dead bodies and the progress of decomposition (*see* Notice (A.) annexed) were notified to me, and were actually attending the Court before the prosecution closed, and that they were not then called; considering, also, that it is an inflexible rule that no fresh evidence whatever is allowed to be produced in rebutter, to make out or to support the case originally made out for the prosecution; except when an entirely new matter, not touched upon in the case for the prosecution, has been adduced for the defence, and that the evidence to be adduced is a negative of a negative, I respectfully object to the reception of any evidence which may now be attempted to be produced in rebutter. If the evidence is to be founded on examination as to the present state of the bones, that clearly is now no evidence; if upon the state of the bones at the time of exhumation, that ought to have been given in chief (as to a considerable extent it has). I object to any evidence whatever (the same having been withheld at first, when I might have answered it), being given now in rebutter, when it might have been given in chief, or in reply, or on a recall before the case for the prosecution was closed (such a course being contrary to rule and practice, and most unjust in its operation), and the prosecutor having pretermitted his opportunity, and now seeking to make a fresh or additional case, or a negative on a negative. I respectfully request my objections may be placed on the records of this Court before any such evidence is permitted, and I also request that this written statement may be taken as my objections to each and every question which may be put, if any such evidence now objected is received. I most respectfully submit to the Court, that it is bound by the ordinary rules of evidence which obtain in the common law tribunals at Westminster Hall, and that the main grounds of objection to the subsequent reception of evidence are, 1st, the manifest injustice to a prisoner, and 2nd, the obvious opportunity for perversion of facts.

I do sincerely trust, that in these observations I have not used one word which I ought not properly to use in urging these objections.

I particularly object to evidence in rebutter being given after my defence put in, the whole of the testimony mentioned in the document produced, might, and ought to have been given in chief before the case for the prosecution was closed.

(signed) *F. J. Cullen*, Ensign,
1st West India Regiment.

Appendix (N).

(A.)

NAMES of two additional witnesses this day furnished to me for prosecution; case of Ensign Cullen, 1st West India Regiment, being tried by general court martial.

A. Fiddes, Esq., M.D. J. Scott, Esq., M.D., of Kingston.	To prove examination of three dead bodies, and give evidence as to progress of decomposition, &c.

(signed) *H. J. Maclean*, Captain,
Deputy Judge Advocate.

To Ensign Cullen,
1st West India Regiment.

(O.)

PROSECUTOR'S REPLY.

Appendix (O).

Mr. President and Gentlemen,

UP to a comparatively recent stage of this protracted investigation, I had indulged the hope of being able to suggest some hypothesis upon which the most material of apparently conflicting statements in evidence might be reconciled.

On Monday the 19th of November, however, this expectation was entirely dissipated, inasmuch as then, for the first time, did the defendant produce witnesses who professed to have actually on the 22nd of October in last year ridden past the bamboo draw rail, to which the three missing men were alleged by the witnesses for the prosecution to have been tied, and then shot. Here, therefore, arose an irreconcileable conflict of testimony, which could only be determined by the greater amount of credible testimony on the one side or the other. Until the production of this evidence on the part of the defence, no indication had been given that such a line of defence would be adopted. Eight persons who had given their services both for the burial and the exhumation of the dead bodies, the subject of this inquiry, had been examined on behalf of the prosecution, and no one question had been asked of them (the persons surely most capable of answering the question), whether or not they had seen volunteers or other troops pass the bamboo draw rail whilst they were engaged in interring the bodies; this of course was a right which the prisoner was fully entitled to assert, and I only regret that it may entail upon me the duty and necessity of occupying the time of the Court at greater length than I could have wished to do. I trust, however, that I shall not obtrude upon you comments on matters of comparatively trivial detail, or on discrepancies which may obviously have been the result of either inadvertence or ignorance of the witnesses on either side. I shall shortly, therefore, recapitulate what appears to me to have been the *primâ facie* effect of the case for the prosecution before the defence was opened, and thereafter consider what ought to be the weight of that defence towards counterbalancing the original case made against the prisoner.

On the 21st of October in last year it is alleged, and must be taken before answered to be truly alleged, that four men were arrested at Duckenfield Estate, charged with the larceny of rum and nails, and this during the prevalence of martial law in that district. These prisoners were forwarded to the Iron Bridge, over the Plantain Garden River, under the custody of three witnesses, and with the ostensible and avowed object of obtaining a summary infliction of corporal punishment, for an offence which by one at least of the four had been confessed. A detachment of the 1st West India Regiment had arrived that morning at the Iron Bridge, and of that detachment the prisoner held the command. Before reaching their destination one of the prisoners when actually within sight of the military, effected his escape, and he has proven that the remaining three unquestionably got as far as he did on the journey to the bridge. The arrival there seems to have occurred about midday; the cause of complaint was communicated to the officer in command, and the request preferred that flogging might be inflicted; this appears at first to have met the approval of the commanding officer, but apparently by some extraneous influence, which it is not now necessary to allude to, a more serious punishment was directed or acquiesced in by that officer.

The result is charged to have been death to the three prisoners with the knowledge and without any intervention by the responsible officer to prevent the infliction of that capital punishment. Conflict of evidence as to the manner of carrying into execution so serious and solemn punishment might naturally be expected, but the defence in this case founds itself upon the utter negation of the facts of either delivery to the military authorities of these three prisoners or of any such punishment having been inflicted. Under such circumstances no direct evidence in defence is possible than either by proving the absence from duty or leave, and of consequent irresponsibility in the commanding officer, or the direct proof that the witnesses who have deposed to the alleged facts were by absence or otherwise never personally cognisant of them. This latter alternative the prisoner has elected and virtually undertakes either to demonstrate the merely visionary foundation of this prosecution, or at least to show that the witnesses who have supported it are totally unworthy of credit. The first step towards this attack was the attempt to undermine the credit for truthfulness of the witnesses for the prosecution by vague charges possibly intended,

intended, though certainly not with much prospect of success, to produce the effect of proof by specific instances, not that the witnesses had incurred local or sectarian odium, but had become untrustworthy from frequent or habitual falsification. The failure of this attempt has been, however, so transparently manifest, that it requires no further allusion to it. It was then attempted to extract from the supposed utterances of the witnesses at various times contradictions, on the face of them, which it would be impossible to harmonize. In most instances of this kind, too, I shall be content with the judgment of the Court. On the evidence as it now stands, without myself making any comment, there are, however, one or two such objections which at first sight have the resemblance of validity. Thus, the witness Samuel Bryan states, in substance, that the three men were tied to the fence, their back to the road, whilst another witness for the prosecution as confidently states that their back was to the grass-piece, their front to the road. There is, however, here no conflict of statement, because, as was shown by more than one witness, the death-stiffening, which would probably continue for at least some hours, even under exposure to a tropical climate and atmosphere, would have relaxed after the lapse of probably more than 12 or 15 hours, and throw the body with that proneness to the earth which was illustrated by witnesses who had seen the bodies on the 22nd.

Again, Abraham George Donaldson admits that he stated before the Royal Commissioners that he did not know how many graves the bodies were buried in, yet still he asserts that all the bodies came out (upon exhumation) of one grave; this is plainly self-consistent, since the witness was present at the grave when the bodies were dug up, but spoke of the burial as judging from a considerable distance. To refer shortly to the circumstantial evidence which the prisoner relies on to support his theory of the utter unworthiness of credit in the witnesses for the prosecution, what consistency is there in the evidence given to induce the belief that no bodies were buried on the Sunday any more than that bodies were shot on the day preceding? It is at least problematical, judging from the testimony of Mr. Lofthouse, whether he and his comrades ever were on the Holland Bay-road; but grant it, and see the account which five different witnesses for the defence give of the most cardinal point in this part of the controversy. Mr. Lofthouse says they went about 100 yards on that road; Mr. Watson says he went 250 to 300 yards; Lieutenant Brass 25 to 30 yards; and the remaining three, namely, Corporal Bedford and Privates Barnes and Cox concur in fixing the distance at 200 or 300 yards. Between these three latter, however, there are further differences—Corporal Bedford swears that he and his two comrades left the Post Office before the rest of the force. Private Barnes, one of the comrades, positively swears that the whole detachment passed them at the Post Office before they had changed the saddle ("at their right hand side, at the Post Office"), two or three minutes before they both started; that they galloped 200 or 300 yards past the bridge; and Barnes, that they then "turned back" and galloped over the bridge to the remainder of the force. Mr. Watson rode on the right of the leading file, Mr. Lofthouse on the right of the second, and Lieutenant Brass on the left of the second file; two troopers were in advance, Berry and Brandon. If then the statement of Private Barnes be correct, that himself and his two comrades galloped from the Post Office two or three minutes after the detachment had passed them there, and continued that gallop for 200 or 300 yards down the Holland Bay-road, it is impossible that they should not have either passed Lieutenant Brass and his three files on that road, or met them when these files were returning. So, again, if Bedford's statement be true, and the racers started on their gallop of 200 or 300 yards and back, finding on their return that the whole column had in the interval during the race passed beyond the bridge some considerable distance (Cox says 500 to 600 yards) on the Amity Hall-road, it is equally inconceivable that they should not have met or overtaken Mr. Brass, and the men under his charge, whether these had marched on the Holland Bay-road 30 yards or 300 yards, and having so met, passed or overtaken Brass's party on the road leading to Holland Bay; it approaches a moral impossibility that such a piece of corroborative evidence, were it true, should not have been prominently brought before the Court in the testimony of Mr. Brass, Mr. Watson, and Mr. Lofthouse. Another witness for the defence, Corporal Hunter, by a daring denial of the evidence of more than half a score of witnesses, has almost succeeded in bringing a merely collateral point into as great prominence as the prosecution against his officer. Irreconcileably conflicting as is the evidence of himself, and some of his comrades in the question of the mode and time of his passing on the Saturday from the Iron Bridge to Golden Grove Estate, it is yet clear, from irrefragable testimony, that his statement of arriving at that property by nine o'clock in the morning, and as the clock was striking, and that he there found troops from Kingston, is utterly incompatible with even the semblance of truth.

The prisoner, in the course of the long address which he has read to the Court, has assumed many circumstances not in evidence, and argued upon them as if they were established facts; in no instance, perhaps, has he more forcibly done so than in his endeavour to make the Court believe that these three bodies are those of persons who died of cholera, and that the ground from which they were taken is an old cholera burial ground. The people of the country can thankfully and truthfully say that epidemic cholera has not prevailed in Jamaica since the year 1854. Can the Court be induced to think that the bones now in the engine-room of these barracks have been buried for 12 years, or is there one iota of evidence to prove that the ground from which they were taken was a cholera burial ground, unless, indeed, any weight is to be attached to the testimony of

Appendix (O).

Dr. Manners on this point. The proposition to be deduced from some of the medical opinions for the defence, that the skeletons are, in one instance at least, but spurious substitutes for the skeletons of Walton, Miles, and M'Call, necessarily implies that those who it is insinuated placed the bones there, in anticipation of this inquiry, were not only wicked, but ingenious in their vice beyond the measure which can be ascribed to any one of the witnesses examined for the prosecution; for as it is said that some of the bones of one skeleton are of older bodies, or an older body than the other bones of that same skeleton, the wicked person who picked them out, and from different graves, must have been possessed of sufficient surgical or anatomical skill to select the proper number to make up a skeleton, which, as Dr. Kerr (and even the medical evidence for the defence) says are perfect, except the small bones, which may be presumed to have become lost in the grave earth, and the supposed difference of age in the bones.

Permit me a few words on the general character of the entire case as it now stands; who are the witnesses to support the prosecution? In most instances, labourers in the employ of some of the chief witnesses for the defence; one of them, Bryan, a book-keeper, who, in reply to a very significant question, stated "that he was still in the employ of Mr. Sinclair." What is the substance of their testimony? "That which their eyes have seen, and their hands have handled;" or is not the story they tell at least consistent with itself? Has it not also corroboration by unquestionable fact? How did these three bodies come to that grave, laid in that extraordinary position at the stump of the cedar tree? Mr. Chisholm invokes the possibility of their having been buried there 16 years ago, in a part of the 10 miles from Holland Bay to Bath, along which he says persons who died of cholera were interred. All things are possible that are conceivable, but it will scarcely be contended that so shadowy a possibility ought to countervail the sworn evidence of eye-witnesses to the fact of the burial of three men by them, in the very grave from which the same witnesses exhumed, 11 months afterwards, three male skeletons, and found none others there. If, however, it should be suggested that those two nondescript fragments of bone (call them coracoids, or condyles, or acromia), which so recently and so mysteriously found their way into the engine-room at Kingston barracks, are deemed portions of a fourth skeleton, the joint occupant of the common grave, why are not the larger bones produced? What again became of Walton, Miles, and M'Call? How is it that not one of them has been seen alive since the 21st of October of last year; further, what motive has been suggested that could, by human possibility, have induced the numerous witnesses for the prosecution to conspire and give testimony which must imperil at least the worldly welfare of the prisoner, whom most of them had never seen before the 21st of October of last year, and many of them never again till they saw him before this Court? To me, it seems that in the absence of all sufficing temptation to commit wilful perjury, the testimony of these witnesses for the prosecution, if it be not true, is devilish. On the contrary, it appears to me that the consistently and resolutely abstaining from filling up what might seem a gap in the case against the prisoner, I mean the absence of any evidence showing that he ever commanded the destruction of these three men's lives, proves most conclusively the integrity and truthfulness of the evidence which they really have given. An unscrupulous and avaricious or vindictive spirit would be incapable of such reverence to truth as this feature, which is almost universally prevalent in the evidence for the prosecution.

Contrast both the nature of the evidence for the defence, the position of most of the military witnesses in relation to the accused, the unquestionable contradictions on material points, which that evidence plainly exhibits, and then let the Court say whether or not it is satisfied that all the witnesses for the prosecution who swear to the killing of the three men whose death it has been inquiring into, are satisfactorily shown either to have committed deliberate and persistent perjury, without any appreciable motive, or, at least, that it has been shown that they are utterly unworthy of being believed on their oaths. One word with regard to the medical testimony. No one can ever speak or think lightly of the professors of the healing art, but such anatomical questions as have incidentally arisen during the progress of this inquiry, present very different aspects under equally different circumstances; and it is no disparagement to the scientific attainments of any osteologist or anatomist to say that the subject-matter on which he may have experimented, or from which he may have deduced conclusions should also be submitted and subjected to the impartial judgment of intelligent men, who, though professing no skill in a specified art or science, do happen to have become aware of circumstances which may possibly affect the validity of conclusions arrived at by one who has not the special knowledge of circumstances, such as prior known condition and the duration of exposure to external influences. I would call therefore your especial attention to the evidence given by Dr. Kerr on his recall by yourselves. I have said that, if the testimony of the witnesses for the prosecution be not true, it is devilish. I desire to present this consideration to the Court in another and different aspect. Admitting for a moment that the evil mind was, and is, in all these alleged conspirators, is it possible, for any indifferent and sensible man, who has seen and heard them, to believe that they have the capacity, and could have made the opportunities, without observation and detection, of constructing the plot and going through the necessary rehearsals of so deep a tragedy in which different classes of witnesses are made to assume and perform wholly different characters; take, for example, that African witness, William Bartley; can any man believe that so ignorant an individual would have been selected to take a part in the play, and, if he were, that he could have so learnt and acted it as to give his evidence in the manner he did; and it must be borne in mind that, if the theory

theory of the defence be accepted, then that man, together with the other seven or eight, who deposed to the fact of having buried and exhumed the bodies, must have been employed to, or must, for some hidden motive which the most acute and critical intellect would fail to discern or bring to light, have voluntarily searched out three human skeletons, have removed them from their respective resting places, and laid them in that false grave to carry out and complete this drama; for the Court must remember Dr. Bowerbank's opinion, that "the skeleton to which the skull marked No 2 belongs has been buried longer than the others, and I do not think the decomposition of the soft parts of the skeleton marked No. 3 especially took place in that grave;" or if the prisoner prefers to rely on the hypothesis of Mr. Chisholm, then these witnesses must have been possessed of some miraculous power of divination to know promptly, and almost at a moment's call, where to go and strike the ground and find three cholera skeletons, not male and female, but three males, laid in a peculiar position in one grave. Again, if these bones were picked out of other graves, and placed in that from which they were dug up by wicked and skilful people to serve a purpose, when was it done? The least reflection will show the Court that on both the occasions when it must have been done (if it was done), there was scarcely time for thought, certainly not time for action, so extensive as is implied. The shameful fraud could not have been practiced to make out a case for the Royal Commissioners, for their progress in the duties with which they were charged was far too prompt from their arrival to their departure, and there was considerably too much activity and vigilance in the whole Rebellion district all the while they were in Jamaica to have permitted the maturing and working out of the plan; it could not have been done before they came, for no human being in Jamaica anticipated their coming. Could it, then, have been practiced in view of the advent to Jamaica of this Court, and of the carrying out of this prosecution; what person of any reputation will venture to say that he expected these proceedings, and have I, or has the Court been so dilatory in the discharge of our respective duties as to admit of this wicked plot being conceived and carried into effect between our arrival and the exhumation of bodies and examination of the witnesses. A few words about that much-abused man, George Grant Manning: what has he done to deserve the calumny with which it has been attempted to tarnish his name; is it that in giving his evidence before this Court he has betrayed any feeling of malice or revenge, or anger; is it that he has contradicted himself in any way, or been contradicted by any one; I make but small comment on the unsuccessful attempt to do so by Mr. Lewis's evidence of conversations with the man; he, Mr. Lewis, showing most indisputably that he did not, by his demeanour and language, encourage Mr. Manning to an open and full disclosure of all he knew. Is it that his story is told by himself alone, and that he is not supported in any way? Is it that the Court is satisfied that he promoted the original disclosures which prompted this more detailed and important inquest? Is it that any man has dared to impute to him the charge of an immoral or corrupt life, or that his conversation has been shown to be impure? No; it is that here, in this nineteenth century, and within the dominions over which British and Christian enlightenment spreads its influence, the worship of God is sneered at and invoked as a reason why a man is to be mistrusted and disbelieved.

If we are to hear the conclusion of the whole matter, let us ask the question, did these three men, M'Call, Walton, and Miles die the common death of all men? The prisoner says they are not dead; he accounts for their non-appearance by the statement that, in fear of punishment for the larceny of the rum and nails, they have gone into other and distant parts of the colony; why then is that man, so providentially taken, as it were, out of the gate of death here, as if, and it is not irreverence to say he was preserved by the Almighty to aid in bringing the truth to light. What says Richard Francis, the beautiful and impressive language of the Psalmist, "So when they cried unto the Lord in their trouble he delivered them out of their distress, for he brought them out of darkness and the shadow of death and brake their bonds in sunder," is traced in the simple and unadorned words of an uneducated field labourer, "I called to God and God let me go; it was God that let me go. God loosed the tie." Is that a lie? Does the coincidence of language not bring conviction home to you that these words came straight away from the very depths of a heart that had felt the mercy of which he spoke?

If, then, one word of the narrative which commences at Peter Phillips' yard on the Duckenfield Estate, and terminates at the grave where the bodies were exhumed be true, the whole must be true; the prisoner himself has elected so to put the case; his defence denies every word of the story from first to last, from beginning to end. If Francis spoke the truth, the prosecution have brought the three men from the Duckenfield Estate in charge of constables to a place to within sight of their executioners; they cannot be left there —they are not there now—the prosecution has accounted for them; if that account be untrue, what other does the prisoner who impeaches it give? None; none whatever. There is no mother or sister, no wife or child called by the prisoner, to depose to the performance of the last sad offices at the death bed of either of these men, no friend to establish the burial of any of them in other place than the Duckenfield grass-piece. One there is, however, called by the prosecution to testify to the fact of three or four young children left orphans; and yet another to speak of the impulse by which he was prompted to go and look in the early day for his shipmate and countryman, and having seen his lifeless body tied to the bamboo draw rail at the Duckenfield grass piece, to return and assist in committing it to the earth at that place. Fearful, indeed, is the original transgression, but more fearful still the means which have been used to conceal the truth from human eyes.

Appendix (O).

Great and serious, beyond doubt, is the responsibility upon those whose duty it is to clear away the impediments and difficulties which beset the path to the truth of this sad transaction, but viewing it by the light in which it presents itself to my mind, I cannot for a moment hesitate to think that that responsibility will be fearlessly and intelligently met and discharged. Attentive and patient, impartial, and considerate as the Court and its officers have been throughout this very lengthy inquiry, I am confident that none of these attributes will relax in the remaining portion of the duty committed to the Court by our most gracious Sovereign; yet I know that the peculiar virtue of that Sovereign and the characteristic of the institutions under which the English people live, is the just and merciful administration of the law. Stern, however, as are the requirements of justice, if there be room to admit of a reasonable doubt about this matter, not only the recognised principles of its administration permit, but my own personal wish, I would almost say delight will be, that the prisoner have the benefit of it; but, on the other hand, painful as the duty must be, not only in view of the immediate results of this inquiry, but of other considerations arising out of preliminary investigations, it must be discharged; and I feel that it will faithfully be, by a calm, deliberate, and thoughtful view of all the evidence taken.

If the case be decided according to the facts deposed to, and not according to the opinions expressed or inferences drawn (however conscientious those may be who express and draw them), if allowance be made for the possible mistake of two or three witnesses (albeit their respectability be admitted and their truthfulness not disputed, albeit they speak with unusual confidence), if the material difference in the value of positive evidence be balanced against negative evidence, then I know and feel that mercy, the brightest side of justice, will not be tarnished if this prisoner be found guilty, then I know and feel that without immolating victims at the shrine of popular clamour, the honour and character for humanity of the British army will be vindicated.

(signed) *C. F. T. Daniell,*
Lieutenant-Colonel 28th Regiment, Prosecutor.

Kingston, Jamaica, 3 December 1866.

(P.)

Appendix (P).

Prisoner's Rejoinder.

With leave of the Court, in respect of the evidence adduced in rebutter, I would observe that Drs. Fiddes and Scott made their examination of the three bones (No. 1 particularly) only a day or two ago; while the other medical gentlemen gave their testimony upon the appearances and colour of the bones as on the 31st October.

If the Court will compare the edges, the colour, the apparent age, and texture of the bone, No. 1, with those of the ilium, which it is said to fit, and also look at the fracture and splitting evidently recently made on the part of the ilium, the Court may itself entertain grave doubts whether the evidence in rebutter as to No. 1, is so perfectly satisfactory.

As to the bones, Nos. 2 and 3, I claim the evidence of Drs. Fiddes and Scott, as being absolutely confirmatory of the medical testimony in defence.

(signed) *F. J. Cullen,*
Ensign 1st West India Regiment.

(Q.)

Appendix (Q).

Firmly persuaded, however, that the Court will deal justly with the evidence brought forward in rebutter, and (with the permission of the Court I will state) also with the points contained in my address, as well as with the supposed answers which have been put forward on the part of the prosecution, I respectfully decline to take up any more of its valuable time. My own honour, and the credit of the service, and the ends of justice, can be implicitly reposed in you, Mr. President, and in you, most honourable members.

(signed) *F. J. Cullen,*
Ensign 1st West India Regiment.

PROCEEDINGS of a GENERAL COURT MARTIAL, held at Kingston, Jamaica, for the Trial of Staff Assistant Surgeon *Henry Morris*.

LIST OF WITNESSES FOR THE PROSECUTION,

Showing their Colour, and the Number of Questions respectively asked.

		Questions	Page
1. John Hamilton (A)	black	2 to 50	136
2. John Steel	black	51 „ 75	137
3. Elizabeth Curate	black	76 „ 98	138
4. John Curate	black	99 „ 134	139
5. William Burke	coloured	135 „ 182	140
6. Ellen Gray	black	183 „ 226	142
7. Robert Deacon	black	227 „ 262	143
8. Stephen Grant	black	263 „ 305	145
9. Richard Cane	black	306 „ 326	146
10. Peter Phillips	black	327 „ 355	147
11. Cyphus Wills	black	356 „ 381	148
12. George Colson	black	382 „ 399	149
13. Robert Speed	black	400 „ 433	150
14. Richard Francis	black	434 „ 455	152
15. Samuel Bryan	coloured	456 „ 535	152
„ recalled		606	
16. Captain Hole, 2nd Battalion 6th Regiment	white	536 „ 546	156
17. Cecilia Robinson	black	547 „ 605	156
18. Abraham George Donaldson	black	607 „ 689	158
19. Thomas Clarke	black	690 „ 717	161
20. Alfred Brooks	white	718 „ 780	162
„ recalled		2569 „ 2573	246
21. John Duaney	coloured	781 „ 813	165
22. John Anderson	coloured	814 „ 856	167
23. Eliza Phillips	black	857 „ 891	169
24. John Hamilton (B)	black	892 „ 938	170
25. George Grant Manning	coloured	939 „ 1009	172
26. Bevis Hunter	coloured	1010 „ 1046	176
27. Thomas Wedderburn	black	1047 „ 1076	177
28. Harriet Warren	black	1077 „ 1101	178
29. Zachariah Bayley	black	1102 „ 1129	179
30. Thomas Brown	black	1130 „ 1162	180
31. William Bartley	black	1163 „ 1179	181
32. Assistant Surgeon Kerr, 2nd Battalion, 6th Regiment	white	1180 „ 1240	182
33. Dr. Fiddes	white	1241 „ 1274	185
34. Richard Taylor	black	1275 „ 1301	187
35. Dr. Scott	coloured	1302 „ 1332	188
36. H. Clarke, R. E. Department	white	1333 „ 1343	191
37. Richard Roden Francis	coloured	1344 „ 1359	191
38. James Sproul	coloured	1360 „ 1373	192
39. Allen Bignall	black	1374 „ 1388	192

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Showing their Colour, and the Number of Questions respectively asked.

1. Francis Thompson	coloured	1389 to 1421	193
2. John Mais	white	1422 „ 1449	195
3. James Cruickshanks	coloured	1450 „ 1463	196
4. Alexander Low	white	1464 „ 1492	197
5. Robert John Stuart	white	1493 „ 1537	198
6. Alfred Alvarenga	coloured	1538 „ 1557	200
7. David Ford	coloured	1558 „ 1586	200
8. Michael C. Myers	white	1587 „ 1607	202
9. Captain Hole, 2nd Battalion, 6th Regiment	white	1608 „ 1622	202
10. John Sinclair	white	1623 „ 1661	204
11. John Lewis Dight	white	1662 „ 1665	206

		Questions.	Page
12.	Romeo W. Drysdale, Police Serjeant - - - - - black -	1666 to 1680	206
13.	Richard Moyle Wilson - - - - - - - - coloured	1681 „ 1702	207
14.	James Austen Fowles - - - - - - - - white -	1703 „ 1712	207
15.	Corporal Hunter, 1st West India Regiment - - - black -	1713 „ 1799	208
16.	Ensign Cullen, 1st West India Regiment - - - white -	1800 „ 1893	211
17.	James Harrison - - - - - - - - white -	1894 „ 1937	215
18.	Alexander Chisholm - - - - - - - - white -	1938 „ 1984	217
19.	John Robson Watson - - - - - - - - white -	1985 „ 2020	219
20.	Frank McDermott - - - - - - - - white -	2021 „ 2033	221
21.	Sutton Scoltock - - - - - - - - white -	2034 „ 2048	222
22.	Charles Henry McDermott - - - - - - - white -	2049 „ 2067	222
23.	Corporal Maddix, 1st West India Regiment - - - white -	2068 „ 2095	223
24.	William George Astwood - - - - - - - white -	2096 „ 2154	224
25.	John Henry Davis - - - - - - - - white -	2155 „ 2160	227
26.	Private John Edge, 2nd Battalion 6th Regiment - - white -	2161 „ 2170	228
27.	Lance-Corporal John Handley, 2nd Battalion 6th Regiment white -	2171 „ 2184	228
28.	Serjeant Lewis O'Connor, 1st West India Regiment - black -	2185 „ 2212	229
29.	Private John Doolan, 2nd Battalion, 6th Regiment - - white -	2213 „ 2232	230
30.	Robert Scott Brass - - - - - - - - white -	2233 „ 2248	231
31.	Private Thomas Gardner, 2nd Battalion, 6th Regiment - white -	2249 „ 2265	231
32.	Private Wolstenholm, 2nd Battalion, 6th Regiment - white -	2266 „ 2294	232
33.	James Alexander Wilson - - - - - - - white -	2295 „ 2319	233
34.	William Moore James - - - - - - - - white -	2320 „ 2324	234
35.	Francis Thomas McFarlane - - - - - - - white -	2325 „ 2333	234
36.	Alfred George Berry - - - - - - - - coloured	2334 „ 2354	235
37.	Private Morris Gordon, 1st West India Regiment - - black -	2355 „ 2369	236
38.	Private John Roch, 2nd Battalion, 6th Regiment - - white -	2370 „ 2377	236
39.	Private Joseph Bedford, 2nd Battalion, 6th Regiment - white -	2378 „ 2396	236
40.	Private John Allen, 2nd Battalion, 6th Regiment - - white -	2397 „ 2403	237
41.	Private J. Cox, 2nd Battalion, 6th Regiment - - - white -	2404 „ 2430	237
42.	Private Blythe, 1st West India Regiment - - - coloured	2431 „ 2457	238
43.	Private Leslie, 1st West India Regiment - - - coloured	2458 „ 2476	239
44.	Colour-Serjeant Webster, 2nd Battalion, 6th Regiment - white -	2477 „ 2487	241
45.	Dr. Manners - - - - - - - - - white -	2488 „ 2502	241
46.	Dr. Anderson - - - - - - - - - white -	2503 „ 2535	242
47.	Hon. Dr. Bowerbank - - - - - - - - white -	2536 „ 2568	244

APPENDIX.

LIST OF DOCUMENTS ATTACHED TO THE PROCEEDINGS.

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6.	Medical Report (Assistant Surgeon Morris) - - - - - - „	(F.)	261
7.	Medical Report (Assistant Surgeon Morris) - - - - - - „	(G.)	261
8.	Opening Address (Prisoner's Defence) - - - - - - - „	(H.)	262
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13.	Prosecutor's Reply - - - - - - - - - - - „	(N.)	263

PROCEEDINGS of a General Court Martial, held at Kingston, Jamaica, for the Trial of Staff Assistant Surgeon *Henry Morris*. Court Assembled 11th December 1866. Trial terminated 2nd February 1867.

PROCEEDINGS of a General Court Martial, held at Kingston Barracks, Jamaica, on the 11th December 1866, in pursuance of an Order of Major General *O'Connor*, C. B., Commanding Her Majesty's Forces in Jamaica and its Dependencies, dated the 10th December 1866.

President:

Colonel Farren, C. B., Depôt Battalion.

Members:

1. Major Williamson - - 48th Regiment.
2. Brevet Major Campbell 71st ,,
3. Captain Walters - - 44th ,,
4. Captain Day - - - - 28th ,,
5. Captain Barstow - - 89th Regiment.
6. Captain Oliver - - - 66th ,,
7. Captain Ready - - - 66th ,,

Captain Maclean, Rifle Brigade, Deputy Judge Advocate.

First Day, 11th December 1866.

At 11 A.M., the Court Opens.

Staff Assistant Surgeon Henry Morris, appears a Prisoner before the Court.

11 Dec. 1866.

The order for the assembly of the court martial, and the warrants appointing the President and Deputy Judge Advocate, are read.

The names of the President and Members are read over in the hearing of the prisoner, and they severally answer to their names.

1. *Question to Prisoner.*] Do you object to being tried by the President, or by any of the officers whose names you have heard read over? —*Answer.* I do not.

The President, Members, and Deputy Judge Advocate, are duly sworn.

The Court proceeds to the trial of Staff Assistant Surgeon Henry Morris, on the following

Charges.

1*st Charge.*—For scandalous conduct, unbecoming the character of an officer and a gentleman, in having on the 18th October 1865, in the County of Surrey, in the Island of Jamaica, during the continuance of martial law, and in a district over which martial law then prevailed, which had been proclaimed there for the purpose of suppressing an insurrection, and for the preservation of the public peace in the island, cruelly, wantonly, and wrongfully shot to death, a man called William Gray, the said act not being done by him, the said Staff Assistant Surgeon Morris, in good faith, for the purpose of suppressing the said insurrection, or for the preservation of the public peace in the said island.

2*nd Charge.*—For scandalous conduct, unbecoming the character of an officer and a gentleman, in having on the 21st October 1865, in the County of Surrey, in the Island of Jamaica, during the continuance of martial law, and in a district over which martial law then prevailed, which had been proclaimed there for the purpose of suppressing an insurrection, and for the preservation of the public peace in the said island, cruelly, wantonly, and wrongfully caused three men, severally named Richard Walton, Tommy Miles, alias Tom Bell, and John McCall, alias George McQuarry McCall, to be shot to death; the said act not being done by him, the said Staff Assistant Surgeon Morris, in good faith, for the purpose of suppressing the said insurrection, or for the preservation of the public peace in the said island.

Plea.

To which charges the prisoner pleads, "Not guilty."

Prosecution.

Lieutenant Colonel Daniell, 28th Regiment, appears

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appears as prosecutor, and, with the Court's permission, read an address, which is marked (A), signed by the President, and attached to the proceedings.

The prisoner, with a view to save the time of the Court, states that he is willing to admit, without calling for proof by evidence, that martial law did prevail at the times and places mentioned in the charges, and that the Act of Indemnity (a copy of which is handed in by the prosecutor, marked (B), signed and attached as usual to the proceedings) was subsequently enacted, and is now the law of Jamaica.

To this proposal the prosecutor agrees.

First Witness for Prosecution.

JOHN HAMILTON, Labourer, residing at Grange Hill, being duly sworn, is Questioned by the Prosecutor:

J. Hamilton.

2. *By Prosecutor.*] WHERE did you live at the time of martial law?—At Grange Hill.

3. Did you know a man named William Gray, if so, tell the Court where he lived at the time of martial law, and what has become of him?—I knew him; he lived at Grange Hill; he was shot during martial law.

4. Where was he shot, and who shot him?—He was shot at a bread-fruit tree at Grange Hill. Doctor Morris called him down; and when he came down he asked, what man is this? A soldier said, "It is one of the Grays." The doctor then tell him he must stand off. He took off his hat and say, "Massa, what I do?" and the doctor say, "I want no chat. Stand off." And he point a pistol at him five times, and the pistol would not go off; and he screwed the pistol from the lock, and then he put it back, and called to one of the soldiers: "Must bring me a rifle here." And then he tell the soldier to stop a little; and he cocked a pistol at Billy Gray, and the pistol go off, and the man fall. When the man fall, the doctor came to me; and when the constable come up he asked him about me. Then the constable said he knew me from a boy, that I lived on the place, and then I walked off. When the man Billy Gray fall, he was dead; he was dead before I went away.

5. Did anybody say anything to the doctor before he told William Gray to stand off?—No.

6. How far is the place, which you call Grange Hill, from Manchioneal Bay?—There is an estate before you come to Manchioneal Bay; it is about a mile from Grange Hill, you go to Muirton, and then to the Bay.

7. Was anybody present when Billy Gray was shot; if so, tell their names?—There was nobody present when he was shot, except Deacon; he was walking with the soldiers and Robert Taylor, from Amity Hall.

8. Do you know the date of the month when this man Billy Gray was shot; what day of the week was it?—I do not date the day, because I do not read or write, but it was Wednesday morning.

9. Was Billy Gray shot during martial law?—Yes.

10. What became of the body of Billy Gray?—When he shot he lay till four o'clock in the evening, then a constable, Stephen Grant, got men and take up the body, and put it at the old buckra's house where the busha lives, Grange Hill house; the body stop there till Thursday morning, then the same persons who took the body up there make a grave and bury him.

11. Did you see anybody at all near the place where Billy Gray was shot, at the time he was shot?—No.

12. Were there any soldiers there?—Yes; a lot of soldiers was there.

13. Did you help to dig the grave for the body of Billy Gray?—Yes; after the hole dug, I took the clothes Billy Gray was shot in off him, and put on clean clothes, and he was buried in them.

14. Do you know if Billy Gray left a sweetheart and any children?—Yes, he left a sweetheart and six children alive.

15. Can you tell the Court why the sweetheart is not here; what is her state of health?—She was sick when I left Grange Hill, where she lives.

16. You said Dr. Morris shot Billy Gray; where is Dr. Morris?—I do not know him now; but I knew him at Manchioneal; I do not live with him.

17. Stand up and look about, and see if he is in the court?—

Witness complies, and then states "that he does not qualify with the face now."

18. *By Prisoner.*] What size place is Grange Hill; how far did you live from Billy Gray?—It is a big place; old sugar estate before time; I live as far from Billy Gray as from this place to the barrack gate.

19. Is there any road or track along which the soldiers came where you say Billy Gray was shot?—Yes; there was a road to the place.

20. Where does that road come from, and where does it go to?—It is a road from early time from the Bay; it is a short road up the hill, and it comes into the King's-road.

21. Can you say if Billy Gray was shot near that road?—Yes, near enough; as far as to the door of the verandah.

22. About how many soldiers do you think were present when you say Billy Gray was shot?—I cannot tell, because I did not reckon it; but they were plenty of soldiers.

23. Who were the soldiers that were there when you say Billy Gray was shot?—There were two white soldiers; doctor make one: rest were black and brown.

24. Was the other, white soldier or white officer?—I do not know if soldier or officer; it was a tall gentleman.

25. How long altogether did the soldiers remain about there, when they came up to Grange Hill this same day?—They did not stop much long; about an hour and a half.

26. About what time in the day do you say that Billy Gray was shot?—About eight o'clock Wednesday morning.

27. Were you sworn before the Queen's Commissioner, Mr. Gurney, in St. Thomas-in-the-East, about the 27th February, at Manchioneal?—Yes.

28. Was your house burnt down during martial law?—Yes.

29. Did

29. Did you swear before Mr. Gurney that Robert Deacon said, "This is one of them for whom you have a receipt," meaning Billy Gray?—Yes, I said so; and Deacon said "This is one of the names on the list at the barracks."

30. Did you not swear that same time that Robert Deacon at the time when he spoke to doctor, pointed to Billy Gray?—Yes; Deacon was walking with the soldiers, and he know the man, and he called the man's name.

31. Did you not swear before Mr. Gurney at the same time and place that doctor presented a pistol three times at him, and it would not go off?—No, I said four times; same as I tell here.

32. Did you not swear at same time and place that doctor took the gun from the soldier and fired, and he fell dead, meaning Billy Gray?—No, I said a pistol.

33. Did you tell Mr. Lewis that it was a pistol or a gun, at the same time when you were examined in Manchioneal about this matter?—I tell him it was a pistol.

34. When did martial law begin, and when did it end?—It was a Monday it began; but I do not recollect when it ended.

35. How many times did soldiers come to Grange Hill?—The whole soldiers only come that time, when they come from Port Antonio; they came there the Monday and searched the place, then they came from the barracks on Wednesday, and went up to Deeling that day that Billy Gray was shot; the barracks were where they stop at Muirton.

36. Are you positive that no soldiers came by that road on the Thursday, after this Wednesday and the Monday?—They used to pass, but they never stop at Grange Hill, except the two days.

37. Are you positive that the whole of the soldiers came by this road on the Monday just before this Wednesday; were they white or black?—No white soldiers come on the Monday, because I did not see white soldiers.

38. Were you there on the Monday (Grange Hill)?—Yes, at my own house.

39. Did any soldiers come from Port Antonio on that Monday, and come past this road, at Grange Hill?—When they searched the place at Grange Hill, then they go to the next place at Lancefield. *J. Hamilton.*

40. When you first heard soldiers and doctor come up, how far off were you from Billy Gray; were you then at your house?—I was on the step of the buckra house; Billy Gray was not there yet. 11 Dec. 1866.

41. About how far from the busha's house was the road on which the soldiers came?—Not far; the busha's house like, at the step you come up here; and the road like the other side here (*the width of this building*).

42. How far were you from Dr. Morris when, as you state, he fired his pistol and shot Billy Gray?—Quite close, not further than this (*pointing to a spot about three paces off*).

43. When doctor fired his pistol and shot Billy Gray, as you say, who was nearest, you or Billy Gray, to doctor?—Billy Gray.

44. How many yards off was Billy Gray from the doctor, and how many were you from Billy Gray, at the time when the pistol was fired?—Billy Gray was as far as that (*pointing to a place which was found to be five paces*); I was standing at the back of the doctor, and the soldiers were right round me.

45. About how many soldiers were right round you when you say the doctor fired?—I cannot tell; I did not reckon them; a good gang.

46. What do you call a good gang in field labour?—About 150.

47. Then, do you think about 150 soldiers were right round you?—I cannot tell; if I tell 100 I may tell a lie, if I say 50 I may lie; I did not count them.

48. You say one white soldier was with Dr. Morris, did you hear the name of the white soldier; was it Captain Hole?—I did not hear his name, but it was not Captain Hole.

49. Do you know Captain Hole, or did you ever see him, if so when and where?—I know him; I go to the barracks with some goods I found, and then I see him.

50. On what day did Captain Hole come to the road on Grange Hill?—I have never seen him on the road.

[The Witness withdraws.

Second Witness for Prosecution.

JOHN STEEL, ——, residing at Belle Castle, St. Thomas-in-the-East, being duly sworn, is Questioned by the Prosecutor.

51. *By Prosecutor.*] Do you remember the time of martial law, if so state when it was, and state where you lived at that time?—I remember it was in October 1865; I lived then at Belle Castle; I was then servant to Parson Harris. *J. Steel.*

52. Do you know a place called Grange Hill; in what parish is it, and if you knew the county state it also?—I know Grange Hill, it is in St. Thomas-in-the-East; I do not know what county it is in.

53. Did you know a man named William or Billy Gray, and is he alive or dead?—I knew him; he is dead now.

54. When did he die, and by what was his death caused?—He died in October 1865; the day was a Wednesday; I was with the soldiers coming from Muirton to Deeling, and after coming back from Deeling come down back to Grange Hill. Dr. Morris was with the soldiers. When he saw Billy Gray, he call him to a bread-fruit tree at Grange Hill, and he ask him, "What is he doing?" and he said, "Minding some cattle." First he ask him, "What is his name?" and he said, "My name is Billy Gray." And then the doctor turned round to a corporal and ask him if he had a name on the list of the name of Gray, and he said, "Yes." And the doctor said, "This must be the fellow," and he said to him, "I am going to shoot you," and he put him standing this way (*placing his hands behind him*). Billy Gray said, "I have been nowhere during the rebellion." The doctor said, "I have your name on the list; I am going to shoot you," and he took out his revolver. He had a revolver at his side, and he took it out and he cocked it at Billy Gray, and it snapped; five times it snapped.

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And he took off the cap and put in fresh powder and another cap, and cocked it, and it snapped again the sixth time. The soldiers were round, and he said to a soldier, "Shoot him," and the soldier shot him with his rifle.

55. Do you remember the names of any persons who were present; if so, state them?—A man of the name of Deacon was there, and William Burke; Mrs. Curate was there and her son; there was plenty more, but I do not remember them; I was in a great fright.

56. How did you know the name of the person you call Dr. Morris, and would you know him now if you see him?—I know his name when I was with the soldiers at Muirton; I would know him now.

57. Stand up and look about, and if you see Dr. Morris in this room point him out?

Witness complies, and points out Assistant Surgeon Morris.

58. In which part of Billy Gray's body did they shoot him?—At his stomach. (*Witness points to the lower part of his own chest.*)

59. Did you know Billy Gray well, and are you sure it was he who was shot; were you any "family" to him?—I knew him well, and am sure it was he who was shot; I was no "family" to him.

60. Was anything done to him after he was shot?—Yes; the soldiers shoot him in several places after he was dead, when he was lying on the ground, and the doctor split his skull with his sword.

61. Can you read and write?—Yes, both.

62. *By Prisoner.*] How far off is Mr. Harris's place from the place where you say you saw Billy Gray shot?—About two miles and a-half.

63. Who is the Mr. Harris whose servant you were; where does he preach; which church does he belong to?—He is a Baptist; he preaches at Belle Castle, Stokes' Hall, and Leith Hall.

64. Did you ever give evidence on oath before the Queen's Commissioners; if so, when and where?—No.

65. Do you know that there was an order to take you in custody with Manning, and bring you before Captain Hole?—No, I do not know that.

66. What were you doing away from Belle Castle or Muirton that Wednesday, away from your master?—The soldiers came up to Belle Castle on the Monday before the Wednesday, and removed Mr. Harris and myself, and the families, to Muirton; on the Wednesday the soldiers told me to follow them.

67. Where was Mr. Harris on the Monday; where was he on the Wednesday?—He was at Belle Castle on the Monday; at Muirton on the Wednesday.

68. Were you taken down with Mr. Harris from Belle Castle, or did you follow the soldiers at the same time with him?—Taken down with him by the soldiers.

69. From where did you follow the soldiers; did you leave Mr. Harris behind at Muirton on the Wednesday?—From Muirton, and I left Mr. Harris there.

70. What was the reason which made you follow the soldiers and leave Mr. Harris at Muirton?—The soldiers told me to follow them wherever they were going.

71. What for were you to follow the soldiers wherever they were going: merely because they told you so?—I followed because they told me to do so; at that time, if the soldiers told you, you were compelled to go.

72. Who were the soldiers that came up about the place about or at Grange Hill on this Wednesday; about how many soldiers were there then?—Black soldiers and white mixed together; there were plenty, but I did not count them.

73. Do you mean soldiers of the 6th Regiment and of the Black company?—I mean of the Black company, not of the 6th Regiment.

74. Are you aware that Ensign Cullen was requested to bring your master, Mr. Harris, with Mr. Manning, before Captain Hole, on some charge for preaching sedition at Stokes' Hall?—No, I do not know.

75. *By Court.*] You said there were black soldiers and white mixed together; how many white soldiers were there?—I cannot tell how many; there were plenty, but I do not know how many white; I do not know what regiment they belonged to.

[The Witness withdraws.

Third Witness for Prosecution.

ELIZABETH CURATE, residing at Grange Hill, being duly sworn, is Questioned by the Prosecutor.

E. Curate.

76. *By Prosecutor.*] DID you know Billy Gray; and, if so, when last did you see him?—I knew him; I saw him last the day I was going to the provision field; it was a Wednesday in October, the same year as the martial law.

77. Where did you see him, and was he alive or dead?—I met him before the soldiers take him up at Grange Hill, at the breadfruit tree.

78. Is there any road near to the place; if so, tell where it leads to?—There is a road near, the old road, the short road that leads to Manchioneal Bay.

79. Did the soldiers say anything to you; tell what?—They said we must stop, we must not pass them.

80. What did you see done to Billy Gray?—Them shoot him; I do not know who shoot him; I do not know the doctor from the other white one.

81. Was it a soldier that shot Billy Gray?—A white man order him to be shot; a soldier shoot him, a short yellow man.

82. Was the white man you speak of who ordered the yellow-skin man to shoot, a soldier?—Yes.

83. Did you hear anybody speak to that white man, and if so, what did they call him?—No, I did not hear.

84. Did you see that white man do anything before Billy Gray was shot?—No.

85. Did you see anybody have a pistol in his hand?—Yes; I saw one of the white men had a pistol in his hand.

86. What did the white man do with the pistol?

pistol?—He point it after Billy Gray at first, and it did not go off; and he point it again and it did not go off; before he ordered the short man to shoot him. *E. Curate.* 11 Dec. 1866.

87. Was it the same white man who pointed the pistol at Billy Gray that ordered the short man to shoot him?—Yes, the same man.

88. What did the yellow-skin man shoot Billy Gray with?—With a rifle.

89. Did you know Billy Gray well, and are you quite certain it was he you saw shot; was he any relation to you?—I knew him well, he lived in the same place with me; I am sure I saw him shot; he was no relation to me.

90. Did you go to your ground that day after Billy Gray was shot, and did you return by the same way to your house on that day?—Yes, I went there and came back the same way.

91. Did you see Billy Gray's dead body as you returned from your ground?—This time I come back from my ground I saw him lying on the ground by the breadfruit tree.

92. What time of day, as near as you can judge, was it that Billy Gray was shot?—I cannot tell; but it was soon in the morning.

93. Do you remember the names of any people who were at the place when Billy Gray was shot; if so, mention them?—Only me, and my son, and a little girl named Ellen Gray.

94. Was there anybody else there whose names you do not know?—I did not see any more at all, only the three I tell.

95. *By Prisoner.*] How far off from the road is your house?—You can stand on the old road and call a person in my yard.

96. Where were you standing when, as you say, you saw Billy Gray shot; how far off from him were you?—No distance at all; about so far (*pointing to a person about six or seven paces distant*); if the soldiers had let me go away, I would not have stopped at all.

97. About how many soldiers were there that day at this place, about this same time, black and white?—There were plenty of soldiers, but I cannot tell how many.

98. Did you see white or black soldiers about there on the Monday or Thursday on the same week of the Wednesday?—I saw black soldiers on the Monday; but the fright of seeing Billy Gray shot made me ill, and I not able to come out of the house on the Thursday.

[The Witness withdraws.

Fourth Witness for Prosecution.

John Curate, residing at Grange Hill, being duly sworn; is Questioned by the Prosecutor.

99. *By Prosecutor.*] Did you know Billy Gray, and where did he live, and is he alive or dead?—I knew him; he lived at Grange Hill; he is dead. *J. Curate.*

100. When did he die, and what made him die?—It was in October last year; he was shoot by the soldiers.

101. Where was he shoot by the soldiers?—Underneath a breadfruit tree on the Grange Hill road.

102. Where does the road lead to, and from what place?—It leads from Williamsfield down to Muirtown.

103. What time of day was Billy Gray shot?—Soon in the morning; I do not know the hour.

104. Where were you coming from and going to when you saw Gray shot?—I was going to the provision field, and coming from my house.

It being now 4 p.m., the Court adjourns till 9 a.m. To-morrow, the 12th instant.

Second Day, 12th December 1866.

On Wednesday, the 12th of December 1866, at 9 a.m., the Court re-assembles pursuant to Adjournment—present, the same Members as yesterday—and proceeds with the Examination-in-Chief of John Curate.

105. *By Prosecutor.*] How did the soldiers shoot Gray; tell the Court all you know about it?—When I come up I see him standing under the breadfruit tree, and a white man point a revolver after him five times, and it don't go off; he turned round directly and order a soldier to shoot him, and the soldier shoot him, Billy Gray, with a rifle; he fall down upon his back dead; he was hit in his breast. *J. Curate.* 12 Dec. 1866.

106. Who was the white man that gave the order?—I don't know his name.

107. Did you hear anybody speak to him, and how did they address him?—They call him Dr. Morris; I heard one of the soldiers call him so.

108. Did you stop yourself to see Billy Gray shot, or did anybody stop you?—The soldiers stop me.

109. Do you think you would know Dr. Morris if you see him now?—No.

110. What sort of a man was it who shot Billy Gray with the rifle?—He was a yellow-skinned man.

111. Was Billy Gray any relation of yours?—No.

112. Can you tell how many soldiers were present when Billy Gray was shot—were they white or black soldiers?—No; there was plenty—lots of them—white and black.

113. *By Prisoner.*] What do you mean by pointing a revolver five times—what sort of a revolver was this revolver?

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Witness describes his meaning by raising his right arm, and adds that this was done five times, and it would not go off—the revolver was a short thing—I call it a revolver because some have five nipples and some six—I never handle them; I only see them.

114. Then do you mean that he put the revolver out, and drew it in five several times, one after the other?—Yes.

115. How long do you think that revolver was?—A little longer than that ruler (*pointing to one which measured nearly twelve inches*); it is not a long, big gun.

116. Had you ever seen a revolver before that?—Yes.

117. How much longer than that ruler do you think the revolver was? Show the Court.—The one I saw at Muirton was a little longer than the ruler; I did not notice the one the white man had; there was so much soldiers there I did not observe it.

118. The revolver that you saw, where was it, at Muirton; if so, whose was it, and when did you see it there?—I saw it at Muirton; it was sent to a man to repair: it was before martial law; I and my father was working there.

119. Is the revolver you saw at Muirton before the martial law the only one you saw at all?—Yes.

120. Where were you standing when, as you say, you saw Billy Gray shot; how far off was he from you; get up and show the Court?—I was close to him, as far as to the wall there (*about five paces*).

121. Then how could you possibly see the revolver pointed five times, if you could not notice the revolver for the soldiers being around you?—As the revolver would not go off the white man draw out, and I saw the revolver in his hand: a horse got away, and a man went after it, and that opened them; they were not just so close to one another.

122. Then do you mean that you only saw the revolver in the white officer's hand after it was pointed the five times?—I saw it when he pointed.

123. Were you standing at the back of the soldiers when you say the revolver would not go off?—Yes.

124. Is it true, then, that you only noticed the revolver after you say the officer drew out?—I only saw it when he drew out.

125. Did the horse get away before or after the revolver was pointed at Billy Gray?—As he point the revolver the horse get away with the bridle hanging over his head.

126. Was the horse in front or at the back of you when he got away, or behind the soldiers?—In front of me, but behind the soldiers.

127. Was the horse standing alone, or was the officer holding the bridle over his arm, or was a soldier holding it when it got away?—A soldier was holding it.

128. *By Prosecutor.*] When you say that the revolver you saw at Muirton is the only one you saw, do you mean the only one beside that which you saw the white man point at Billy Gray?

The Prisoner objects to this question for the following reason: I submit that this question on re-examination is inadmissible, as suggesting an answer; it is not a question put on cross-examination.

The Prosecutor replies that the question does not suggest an answer; it is in terms the same as a question put by the Prisoner and allowed, and there is no principle by which the character of the questions can be differently regarded.

The Prisoner rejoins: That which can be asked in a certain leading manner in cross-examination cannot, by the rules of evidence, be allowed to the same extent in re-examination; the rules as to examination-in-chief, and as to re-examination in putting questions, are similar; not so on cross-examination.

The Court is cleared for deliberation.

The Court decides that this question, in its present form, is of too leading a nature, and that it should not be replied to.

The Court is re-opened, and this decision is announced.

129. *By Prosecutor.*] How many revolvers have you ever seen?—Two.

130. Tell the Court what two you allude to?—I saw one at Muirton, and one in the white man's hand, at Grange Hill-road, the day he shoot Billy Gray.

131. You have said you saw the revolver in the white man's hand when he pointed it at Billy Gray; was that the same man who you say drew off?—Yes.

132. What, then, do you mean when you say you saw the revolver in his hand after he drew off; explain to the Court what you mean?—When the horse got away, and the man went after him, I saw him point the pistol; I saw him between two men, and after the pistol would not go off, and he drew out, I saw it again.

133. By the *Court.*] At which point of the revolver did the horse break away?—At the second point.

134. Besides the soldiers, whom did you see present when William Gray was shot?—I don't see nobody but soldiers, and my mother and Ellen Gray.

[The Witness withdraws.

Fifth Witness for Prosecution.

WILLIAM BURKE, Sailor, belonging to Scot's Run, near Manchioneal, being duly sworn; is Questioned by the Prosecutor.

W. Burke.

135. *By Prosecutor.*] Do you remember the time of martial law?—Yes; it was 18th October 1865.

136. Did you know a man named Billy Gray; if so, tell the Court where he is, if you happen to know?—I know Billy Gray; he is at Grange Hill; he died.

137. What caused his death?—He shot in the martial law.

138. Who shot him?—Dr. Morris.

139. Did

139. Did Dr. Morris shoot him himself?—No.

140. How, then, was Billy Gray shot?—Dr. Morris pointed a revolver five times, and it snapped; and he order a soldier to shoot him; and the soldier shoot him in his front with a rifle.

141. What sort of a soldier was it who shot Billy Gray?—A short, yellow-complexioned man.

142. Was Billy Gray shot; and was he killed?—Yes.

143. How do you know it was Dr. Morris; do you know Dr. Morris now?—Yes.

144. Stand up and point him out, if you see him in Court?—(*Witness complies, and identifies Assistant Surgeon Morris.*)

145. Where did this shooting take place; describe the place as well as you can?—At Grange Hill, near a large tree—a breadfruit tree.

146. Was it near any road; if so, state which?—Yes, near the old road to Muirton.

147. What were you doing there at the time, and state what time of day it was?—I was going to Muirton to get a protection from Captain Hole for my house; it was eight o'clock in the morning.

148. What did you see there when you got to Grange Hill?—I saw the soldiers coming from Deeling; black soldiers and two white officers.

149. What more did you see?—I saw no more; but when I came down the road Dr. Morris called Billy Gray, and he asked him "where he was when he come to his house"; he said "he went a little ways," and then he order him to be shoot.

150. Did you hear Dr. Morris say anything to any one about Billy Gray, before he ordered him to be shoot?—He asked Deacon if this man (meaning Billy Gray) was at the Bay; I did not hear what Deacon said.

151. Do you know what day of the week, month, and year this was?—On Wednesday, the 18th October 1865.

152. Was Billy Gray any relation of yours?—No.

153. Can you read and write?—Yes.

154. Do you know in what parish and county Grange Hill is?—In St. Thomas-in-the East; I forget the county.

155. Did you know Billy Gray well, and are you quite certain that it was he you saw shot, as you have described?—Yes, I know him well, and I am certain it was him I saw shot.

156. *By Prisoner.*] Did you ever give evidence on oath before any of the Queen's Commissioners about this matter?—No.

157. Who is William Burke, of Ginger Hall, who did give evidence on oath; are not you the same man?—No; I do not know Ginger Hall.

158. How far is Scott's Run from the main road to Muirton?—A mile.

159. How far is Scott's Run from Muirton, and from Grange Hill?—About two miles to Muirton; and to Grange Hill about a mile by the long road; but there is a short cut.

160. Where is Scott's Run; is it or not on the other side of Muirton, towards Portland side, or on this side of Muirton?—This side of Muirton.

161. How long did you stop at Grange Hill this same time when you say you saw soldiers and two white officers there?—About a quarter of an hour.

162. Is Grange Hill on this side of Muirton, or on the other (Portland) side of Muirton?—This side.

163. Where, exactly, were you standing when you say you saw Billy Gray shot?—Close enough—I was so far from the Doctor (*pointing to a spot about five or six paces distant*).

164. Were you amongst the soldiers at the road, or were you at the back or front of them, this same time?—I was in the midst of them.

165. Did you hear what Dr. Morris' word was when you say the order was given by him to shoot Billy Gray?—He said to the soldier that he must shoot the man.

166. You say there were two white officers; one you called Dr. Morris; who was the other officer?—Ensign Cullen.

167. You were asked about martial law time; did martial law begin or end on the 18th October 1865?—It end about November.

168. How do you so well remember it was the 18th October, and on what date did the soldiers leave Muirton?—I can read, and I have an almanack; they left Muirton about December, on a Sunday, but I do not remember the date.

169. When first did you begin to think of the 18th October 1865; did you ask any one about it?—I remember it from the time; I did not ask any one about it.

170. Are you sure the soldiers were coming from Deeling; if so, who told you?—I am sure, nobody told me, but I saw them coming down.

171. Did you take the date at all, or put it down; and if you put it down, when did you do so, and why did you do so; Billy Gray was no relation of yours?—I remember the date, and keep it in mind, but I did not put it down.

172. How far off were they when you first saw them coming down from Deeling; did you see them in the mountains?—I was abreast of the road where they were coming from; I was quite close; about four or five paces.

173. At what particular spot was that, and how far on the other side of this breadfruit tree?—The soldiers were coming from the mountains; I was in the middle of the road; from the breadfruit tree it was about as far as from here to the barrack gate.

174. Which way did the soldiers then march after returning from Deeling?—They marched on to Williamsfield way.

175. Did you go to Grange Hill at any other time but this same time during martial law?—I went other times during martial law.

176. When you left the place where you say Billy Gray was shot at Grange Hill, did you go on to Muirton to see Captain Hole, for protection, that same day, and where did you go to after that?—I returned back with the soldiers.

177. How far back, and where did you go back with the soldiers that same day?—Up to Scott's Run.

178. Have you talked about this shooting of Billy Gray with any one from Grange Hill, or at Manchioneal?—When I go home to Scott's Run, I "alarmed" it that the doctor shoot Billy Gray.

179. How far is the Busha's house doorstep from the breadfruit tree, where you say you saw Billy Gray shot?—About as far as from where I am to the barrack gate.

180. When you returned back with the soldiers,

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diers, did all the soldiers and officers go too, at the same time; at what hour did they return?—They all left together, and left Scott's Run to go to Haining about 12 o'clock noon.

181. Did they leave you at Scott's Run that same day, or did you go on with them that day to Haining?—They leave me at Scott's Run.

182. By the *Court.*] You say that you saw Billy Gray shot; did you see any mark on his body after he fell?—Only where the ball took him; in his stomach (*pointing to his chest*).

[The Witness withdraws.

Sixth Witness for Prosecution.

ELLEN GRAY, residing at Grange Hill, being duly sworn; is Questioned by the Prosecutor.

E. Gray.

183. *By Prosecutor.*] DID you know William, or Billy Gray, and what relation was he to you?—He was my brother.

184. Is Billy Gray alive or dead?—Dead.

185. Do you know what killed him, if so tell the Court?—They kill him in the martial law; the soldiers; a short yellow-skin man shoot him.

186. Where did the man shoot him; at what place?—At a breadfruit tree; at Grange Hill.

187. Is there any road near to the place, if so, tell what road, where it leads from and to?—Yes; there are two roads, one old road and one new road; they both go to Manchioneal Bay.

188. Was the yellow-skin man you speak of a soldier?—Yes.

189. What time of day was it when you saw Billy Gray shot?—I do not know the time, but soon; when I going to provision field.

190. How did you go to that place where Billy Gray was shot, and whom did you go with?—I was going to the provision ground from my house; I go with Mrs. Curate, she was going too.

191. What kind of soldiers was it you saw, white or black?—They were black soldiers and white ones with them.

192. Was there anybody else with you and Mrs. Curate?—There was William Curate, the young man you done with this morning.

193. Did you see anybody do anything to Billy Gray before the yellow-skin man shoot him?—I see a white man point a pistol at him three times.

194. Did the pistol go off?—No.

195. What made the yellow-skin man shoot Billy Gray; did anybody say anything to him, the yellow-skin man?—The white man gave an order to shoot him.

196. What did the yellow-skin man shoot Billy Gray with?—He shoot him with a rifle; the big gun.

197. Do you know what month, or day of the month, or week, and what year, this happened on?—One Wednesday in October last year; I do not know the day of the month.

198. Was it the same white man who pointed the pistol at Billy Gray, who ordered the yellow-skin man to shoot him?—Yes.

The Prisoner objects to this question, and explains that he would have done so before the answer was recorded, had there been time. His objection is, that the question is one put in examination-in-chief, and is of too suggestive and leading a nature for the witness. It almost points to what the answer is to be.

The Prosecutor respectfully presses the question, and submits that it is not a leading question, that it is calculated to evoke a very material piece of evidence, and it is not practicable to shape the question in any other way. The witness has not used any name, she has only described a person as having done one thing, and with the same description has said another thing was done (or said), and simply to ask if it was the same person who said and did, is, he respectfully submits to the consideration of the Court, legal and allowable.

The Prisoner rejoins.—The question can easily be properly put as thus: Who was the person that held the revolver? Who was the person who gave the order?

The Court is cleared for deliberation.

The Court decides that the question is a leading one, but as it has been replied to and cannot be expunged, it marks its sense of the inadvertent admission of the question by dismissing from its consideration any impression which the reply might be calculated to give rise to.

The Court is re-opened, and the above decision is announced.

199. *By Prosecutor.*] Do you know any of the soldiers' names, or would you know any of them now, if you were to see them?—No.

200. Who do you say pointed the pistol at Billy Gray?—One white man.

201. Who do you say told the yellow-skin man to shoot Billy Gray?—The white man.

202. Which white man?—I do not know the white man. I never saw him before I saw him on the path at Grange Hill.

203. Do you know an officer from a common soldier?—No.

204. How many white men did you see there?—I did not reckon how much white men were there, for I was frightened when they shoot my brother; there were plenty of soldiers.

205. When the white man pointed the pistol at Billy Gray, and it did not go off, what did he (the white man) say or do?—He order the yellow-skin man to shoot.

206. Do you know what your brother was doing just before they shot him?—I cannot tell what he was doing; for I was coming up and he was coming down, to the breadfruit tree.

207. Did you see in what part of his body Billy Gray was shot?—Here (*pointing to her chest*).

208. By *Prisoner.*] Did you hear, as you say, the white man give the order. What word did he speak same time?—Yes; he gave orders, "Shoot that man."

209. Were you in front of, or behind the soldiers, this same time?—Side and side. I stand up close alongside the soldiers and Mrs. Curate.

210. How far were you from Billy Gray when shot,

shot, and from the soldiers?—I was not far off at all (*Witness skows the distance, about two paces*). I was not much far from the soldiers, quite close.

211. Then, were the soldiers the same distance from Billy Gray as you were, when you stood side by them?—The soldiers stand opposite Billy Gray, I was at the side; they were as far as from you to me (*about three or four paces*).

212. Were the soldiers behind the white man, or in front of him?—They stand up behind the white man.

213. Show how near the soldiers were standing behind the white man?—(*Witness shows the distance, about a yard*).

214. Were the soldiers all around you, or were you on one side of all of them; or was any soldier in front of you?—The soldiers were standing all round, and some in front of me.

215. Did you say a little while ago that there were plenty of white soldiers, and plenty of black soldiers there at same time, when, you say, Billy Gray was shot?—There were plenty of soldiers, both black soldiers and white soldiers, plenty.

216. How do you know the white man pointed his pistol three times; did you count, and were any soldiers standing between you and Billy Gray; can you count, or read or write?—Yes, I saw him, and I count; no soldiers stood between me and Billy Gray at the time. I can count, but I cannot read or write. *E. Gray.* 12 Dec. 1866.

217. How far off the bread-fruit tree were the soldiers when you say Billy Gray was shot?—Not far off at all, under the bread-fruit tree.

218. How far is the bread-fruit tree from the road; show if you can, or point out any distance?—You walk at the side of the bread-fruit tree when you go along the path. There are two bread-fruit trees, one on each side.

219. After you say you saw Billy Gray shot, where did you go?—After I see him shot, I went to the provision ground.

220. How long did you remain there at your ground; tell what time of day?—I did not stay; when I get there I come back; I frightened, and take ill in my bowels.

At 1.30 p.m. the Court adjourns till 10 a.m. to-morrow, the 13th instant.

Third Day, 13th December 1866.

On Thursday, the 13th December 1866, at 10 a.m., the Court re-assembles pursuant to adjournment. Present, the same Members as yesterday, and proceeds with the Cross-Examination of Ellen Gray.

221. *By Prisoner.*] Were you examined before the Queen's Commissioner about this matter?—No.

222. Do you know Parson Harris of Belle Castle?—Yes.

223. Who told of your name as a person to be a witness?

Before recording this question the Court is cleared for deliberation, and decides that this question is too vague.

The Court is re-opened, and the question, at the prisoner's request, is recorded; but the witness is directed not to reply to it in its present form.

224. Have you seen Parson Harris or George Manning lately?—I have not seen Mr. Harris for about two months, since I been here; I saw Mr. Manning yesterday. *E. Gray.* 13 Dec. 1866.

225. You said you were ill the same day as you say Billy Gray shot and went home; were you ill all that night?—Yes: I sick all night.

226. *By Court.*] You have said that the white man pointed his pistol three times at Billy Gray, and afterwards gave order to the yellow skin to shoot him; was he (Billy Gray) tied; and if not did he make any attempt to escape?—No, I do not think there was rope; he did not try to get away.

[The Witness withdraws.

Seventh Witness for Prosecution.

Robert Deacon, Engineers' servant of H. M. Gunboat "Nettle," being duly sworn, is questioned by the Prosecutor.

227. *By Prosecutor.*] Where did you live during martial law?—I was in Muirton. *R. Deacon.*

228. Did you know a man named William, or Billy Gray, and can you say if he is alive or dead?—I knew him; he is dead.

229. When did he die, and where?—At Grange Hill: on a morning; I do not remember the day, but in October last year.

230. Describe to the Court particularly what part of Grange Hill?—It was on the road leaving Muirton through Grange Hill, by two bread-fruit trees.

231. Where does the road lead to, and end?—It is a straight road from Manchioneal Bay through Grange Hill; then through Williamsfield, across the river, and up to Haining.

232. How did Billy Gray die; what caused his death; tell the Court all you know about it?—The morning we left Muirton and went to Deeling, that is me and the soldiers, black soldiers and a few white ones, we turned back from Deeling; the doctor saw three men sitting on the step at Grange Hill House; he went there with a few soldiers and ordered them down to the bread-fruit tree; and when he come he, the doctor, asked me if I knew the men's names; I says, "I know two names, the other one I did not know;" he says, "You must tell the names;" I say,

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"The one is Billy Gray, the other John Hamilton;" well, the corporal say he has down Billy Gray's name on his list; the corporal's name, William Hunter. The doctor put out Billy Gray, and say he must stand up, and he did stand up; the doctor point his revolver at Billy Gray and it did not go off, and he order a soldier with a large rifle and shoot him, the soldier shot him, a white soldier.

233. Whom did the doctor order down to the bread-fruit tree?—Billy Gray, John Hamilton, and the other man whose name I did not know.

234. Did you see Billy Gray shot; if so where was he hit, on what part of his body?—I saw him shot; I do not know what part of his body he was hit, but I saw him fall down on his back.

235. Was Billy Gray any relation of yours?—No.

236. You have spoken of a doctor; do you know his name?—Yes; his name is Mr. Morris.

237. Do you know Dr. Morris by sight; could you point him out if you saw him; have you seen him since the day Billy Gray was shot; and if so, state when and where?—I know him; and could point him out; I saw him come on board the "Nettle" at Morant Bay when I was there; perhaps three months ago.

238. You have said the doctor pointed his revolver at Billy Gray and it did not go off; how many times did he point the revolver?—Five times he point, and the revolver snap.

239. How long have you been a servant on board H. M. ship "Nettle," and are you on the ship's books?—Six months now; I am on the ship's books.

240. How long after Billy Gray was shot did you remain at the place where he was shot?—I did not remain there; I follow the soldiers to Haining; I was with them.

241. How many soldiers do you think were there; how many white and how many black?—I do not know, I did not count them; I cannot tell how many white or how many black.

242. What hour of the day did this happen?—About eight o'clock in the morning.

243. *By Prisoner.*] At what hour did you leave Muirton that same day?—About seven o'clock in the morning, or 7.30.

244. How far is Deeling from Muirton or Manchioneal Bay?—Deeling is a mile from Muirton, a mile and a-half from Manchioneal Bay.

245. Which is furthest from Manchioneal Bay or Muirton, Deeling or Haining?—Haining is the furthest.

246. How far is Hainiug from Muirton and Manchioneal Bay?—About four miles from Haining to Muirton, and about five miles to Manchioneal Bay.

247. How do you go from Muirton to Haining; can you go by the same road as past Grange Hill?—Yes.

248. Do you pass Deeling to go to Haining, if you take the road past Grange Hill?—You do not go through Deeling; there is a road on the right hand opposite buckra house, at Grange Hill, which goes to Deeling.

249. How far is Deeling off the road which goes from Muirton, past Grange Hill, and on to Haining?—It is half-a-mile from Grange Hill buckra house to Deeling.

250. When first did you get to Deeling; the same day when you left Muirton, about seven or half-past seven that same morning, as you stated, and how long did you remain at Deeling with the soldiers?—We did not remain long at Deeling. I do not know how much o'clock when we got there, but we did not stop long, but turn back immediately.

251. What did you go to Deeling for; state what you know to the best of your belief; what was done when you got to Deeling with the soldiers; did you go for nothing?—I went with the soldiers; I saw nothing done but the houses burnt at Deeling; I went with the soldiers of my own free will.

252. Did the soldiers take as long as you have been sitting in that chair, at Deeling, to burn the houses and do what they went for, before they left Deeling; tell about how long, will you, they stayed there?—From the time I come in here, they had been up to Deeling and back again to Grange Hill.

253. You are asked to tell about how long you remained there at Deeling; give some idea?—I cannot say how long I was at Deeling, for I have no watch with me, and I do not know the time.

254. Were you examined before Mr. Russell Gurney, the Queen's Commissioner, on the 27th February 1866, at a place called the Barracks?—Yes.

255. Did you at the time when, as you say, Billy Gray was brought up with the other men, at this same time, at Grange Hill, say, "This is one of those for whom you have a receipt," or "for whom there is a receipt," or "whose name is on the list," or any words to such effect, or was it the corporal?—I did not say anything like that; but the corporal say, "This man's name on his list."

256. Was John Hamilton, one of the witnesses examined at the same time before Mr. Gurney, the same witness who was examined here before this Court?—Yes; the same man.

257. You state that you left Muirton that morning to go with the soldiers to Haining; why did you not go straight on to Haining, but turn out of your road and go to Deeling?—The soldiers went out of their road, and I went with them.

258. Did you not swear before Mr. Gurney that the doctor fired a revolver six times at Billy Gray?—I said five times.

259. Did you not swear before Mr. Gurney, on questions "Did the revolver go off?" "Then he tried to shoot him" (*in answer*), "Yes; and then he took a large gun from a soldier and shot him?"—I said the revolver did not go off, in answer to the first question; to the other, I did not say the doctor took a gun at all.

260. In October last year, what was your occupation about Manchioneal?—I was with my father, working in the provision field.

261. *By Court.*] What regiment did the soldier who shot Billy Gray belong to; was he of a black or white regiment?—He join the black regiment; I do not know what he belonged to.

262. Do you know the soldier who fired the rifle at Billy Gray by name, or would you know him if you saw him?—I do not know his name; I would not know him if I saw him.

[The Witness withdraws.

Eighth Witness for Prosecution.

STEPHEN GRANT, Constable at Grange Hill, being duly sworn, is questioned by Prosecutor.

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263. *By Prosecutor.*] WHERE did you live at the time of martial law?—In Grange Hill.

264. Did you know a man named William or Billy Gray, and can you tell if he is alive or dead?—I knew him, he died.

265. How do you know he is dead?—He shot in martial law; I was the constable who asked Captain Hole for liberty to bury him; I see him lying down at the bread-fruit tree on Grange Hill property; the bread-fruit tree on the road side; the road which leads to Manchioneal Bay, or to Kingston; it is a cross-road; there are two bread-fruit trees at the place, one on each side of the road, their leaves combine; Billy Gray was dead when I saw him lying down.

266. Did you see any mark on the body, when he was lying down under the bread-fruit tree?—Yes; he have a chop, a cut on the forehead, nothing else.

267. Can you fix the date of the week, month, and year, when you saw Billy Gray lying dead under the bread-fruit tree?—Eighteenth October 1865, on Wednesday.

268. Did you get any paper from Captain Hole, giving you leave to bury the body?—Yes.

269. Can you read and write?—Yes, a little.

270. Have you the paper you got from Captain Hole with you?—Yes.

271. Produce the paper to the Court?—

> Witness produces the paper, which is read by the Deputy Judge Advocate, marked (C.), signed, and attached to the Proceedings.

272. Did Captain Hole write that paper before your eyes, and give it to you?—He wrote it before me and gave it to me.

273. That paper bears the name of Stephen Johnston, did you give your right name to Captain Hole?—I gave my right name, but he make a mistake by putting Johnson.

274. After you got the paper what did you do?—I leave Muirton and come up to Grange Hill and take two men, Crame and William Mitchell, who were hung afterwards in martial law, and carry the body up to the Great House on the 18th, the day he was shot; on Thursday morning, the 19th, I was going about as a constable; I gave the paper, the same paper I just give in, to Richard Cane, to see the body buried.

275. Why did you give the paper to Richard Cane?—I had no time myself, as I was going about as a constable.

276. Did you know Billy Gray well, and are you sure it was he you saw dead, and whose body you removed to the Great House?—Yes, I knew him well; it was the same man I saw dead; I met him before in the morning, when he was going out to look for the minister's cow.

277. Was Billy Gray any relation of yours?—No.

278. Are you quite sure the paper you have handed to the Court is the same you got from Captain Hole, which you say he wrote in your presence?—The same paper.

279. *By Prisoner.*] Where were Crame and Mitchell hung, and on what day; is Richard Cane the same person as Crame, who was hung with Mitchell?—I saw the volunteers take them away, but I do not know the day, and they never come back since; Richard Cane and Crame are different men, Richard Cane was not hung.

280. You say volunteers took them from Muirton; what volunteers took them?—I do not know.

281. Were you a regular constable or a special constable, who carried a staff and wore a badge for the time being, and are you now a constable?—I was a rural constable before that time and at that time, and I am one now.

282. At what place and time of the day did you see Captain Hole, when you say he gave you that paper?—I saw him at Muirton Great House, about 4 o'clock p.m.

283. How long have you had that paper, just before you produced it to-day?—I had it from the 18th October last year.

284. All that time, are you sure?—Yes.

285. Look well at that paper; is that the paper in the same state in respect of all the writing, from the time when you say you received it from Captain Hole, to the time when you produced it before the Court?—

> The writing of the Deputy Judge Advocate is not referred to, nor that of the President.

It is just the same, except what I write myself on the back, "Mr. Andrew Williams, No. 5 Regiment."

286. When did you write that which you say you wrote on the paper, on the back?—On the same day I got the paper, the 18th.

287. Did you write that which you say you wrote, after or before you got leave from Captain Hole?—After when I got leave, as I did not have the paper before that.

288. You say you wrote what you did write on the same day; where did you write that?—At my house.

289. Read that paper?—

> The Witness reads a portion of the paper thus: "The bearer, Stephen Johnson;" "a dead body at Grange Hill;" "Manchioneal, 18th October 1865" but states that he cannot make out the rest, but subsequently points out and reads the words, "to bury."

290. Write "Andrew William, 5th Regiment"?—

> Witness complies, and the writing is marked (D.), signed and attached to the proceedings.

291. Where did you keep that paper all the time, from the 18th October last year to the time when you produced it?—Richard Cane keep it from the 18th October, till I produce it.

292. You say "Richard Cane kept the paper from the 18th October 1865 till you produced it;" where did he keep it to your own knowledge?—He keep it in his own house, so he told me.

293. Can Richard Cane read or write, to the best of your belief?—Yes, a little; he can sign his name, but I do not know how farther he can go.

294. Did you write "Andrew Williams" before you gave that paper to Richard Cane?—Yes.

295. You

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295. You say you saw Captain Hole at 4 o'clock on the same day and got that paper from him; what made you write, as you say you did, on the back of the paper, the same day?—The man was in the regiment, and I write the name as a flourish, just to remember the name.

296. Was Andrew Williams at the same place where Captain Hole was, when you saw Captain Hole?—He was in the camp at Muirton Great House, but I do not know if he was there just the same hour.

297. Did you see Andrew Williams after you got the paper from Captain Hole, at the camp at Muirton Great House that same day?—He rode and I walk with him as a constable, from Grange Hill to Muirton, on the morning of the 18th.

298. Did you see this Andrew Williams after you saw Captain Hole, as well as in the morning?—No.

299. Where had Andrew Williams been that morning, that he should be returning alone with you in the morning?—Coming from Scott's Run; he went there the day before on duty.

300. Were you ever examined on oath before any of the Queen's Commissioners; is this the first time you have given your evidence on oath about this matter?—This is the first time I have been examined on oath.

301. *By Prosecutor.*] Why can't you make out the other words in the paper, which you have not read?—They are tedious words which I cannot join together.

302. You said, in answer to a question, "How long had you that paper, just before you produced it to-day?" "From the 18th October last year, I had it;" and again to a question, "All that time are you sure?" you said, "Yes;" then again, you said in the early part of your examination in chief, and again in cross-examination, "that you gave it to Richard Cane," and "Richard Cane had it;" explain fully to the Court what you mean, and when you parted with the paper, and when again you saw it?—I gave it to Cane on the 19th October 1865, and I saw it to-day; I did not see it between those times.

303. Who gave it to you to-day?—Colonel Daniell.

304. *By Court.*] You say that Billy Gray was shot during martial law; how do you know that he was shot?—I saw him hearty in the morning; the "alarm" was all about that he was shot by the soldiers, and I saw him lying dead afterwards.

305. To whom did you give the body of Billy Gray in charge when you had it moved to Grange Hill Big House?—Billy Gray's own family take care of the body that night; Nathaniel Gray, his brother, and Billy Gray's housekeeper, Henny Scott.

[The Witness withdraws.

Ninth Witness for Prosecution.

RICHARD CANE, a Labourer, residing at Grange Hill, being duly sworn, is questioned by Prosecutor.

R. Cane.

306. *By Prosecutor.*] DID you know Billy Gray, and is he dead or alive?—He is dead. I knew him.

307. When did he die, and where?—In martial law, in October 1865, at Grange Hill; bnt I bury him 18th October.

308. Who dressed his body before it was buried, that is, for the burial?—I did.

309. When did you first see his body?—In the Grange Hill buckra house, on the 18th October.

310. Was it the same day you saw the body first, that you buried it?—Yes.

311. Was that the same day he died?—

The Prisoner objects to the question on the following grounds: that it is attempting to get an answer partly by hearsay and partly by the Witness's own knowledge. He has already stated that he did not know the day of Billy Gray's death, or see him shot. The Prosecutor ought not to press his own Witness on the same point over and over again.

The Prosecutor declines to make any reply, but presses the question, and leaves the matter in the hands of the Court.

The Court is cleared, and decides that the question may be put. The Court is re-opened, this decision announced, and the Witness directed to answer the question.

No.

312. In what condition did you see his body when you dressed it or undressed it to bury it; state fully to the Court all you saw?—The clothes he had on I took off; they were covered with blood; I take them off and put on clean clothes I saw a ball go through his stomach (*pointing to his chest*) and out of his back, and a cut right down his forehead and eyebrow.

313. What time of the day did you see the body in the buckra house at Grange Hill?—Six o'clock in the morning.

314. Did you get any paper from any one, giving you leave to bury the body, and would you know that paper again if you see it?—Stephen Grant gave me the paper; I would know it again if I see it, I think.

315. Look at the paper now produced and shown to you, and tell the Court if you know anything about it?—

The paper marked (C.) is shown to the Witness, and he identifies it as that given him by Stephen Grant.

316. To whom did you give the paper?—To Mr. Jackson.

317. Who buried Billy Gray's body, and where?—I and John Hamilton; in the yard of Billy Gray's own house.

318. Was Billy Gray any relation of yours?—No.

319. Had Billy Gray any wife or sweetheart, and where is she?—He had a sweetheart, Henny Scott; she lives at Grange Hill.

320. Did you keep that paper all the time from Grant gave it to you till you gave it to Mr. Jackson?—Yes.

321. *By Prisoner.*] Where were you all the day, up to the time when you first saw the dead body you call Billy Gray's, at the buckra house?—At my house.

322. How

322. How far off is your house from Billy Gray's house; are not the old negro houses at the back of the buckra house?—Near a quarter of a mile, I think; the old negro houses are not at the back of the buckra house.

323. How far are the old negro houses from the buckra house in which you say you saw a dead body?—Very near enough; from this to the gate of the barracks.

324. Did not black soldiers come about Grange Hill on the Monday and Tuesday just before this same 18th October last year, and were there not complaints about soldiers plundering on those days at Grange Hill?—There were black soldiers about on the Monday and Tuesday, and there were complaints about their plundering. *R. Cane.* 13 Dec. 1866.

325. Do you know that Nathaniel Grey went from Grange Hill to be examined on oath at Manchioneal; where is he now?—I do not know, he went to Manchioneal to be examined on oath. He has gone home, back to Grange Hill.

326. You say Nathaniel Grey went home back; was he up here in Kingston lately?—Yes.

[The Witness withdraws.

Tenth Witness for Prosecution.

Peter Phillips, Head Man and Constable on Duckenfield Estate, being duly Sworn, is questioned by the Prosecutor.

327. *By Prisoner.*] Where did you live during the rebellion?—At Duckenfield, on my own property. *P. Phillips*

328. Do you remember any men being brought to your yard under charge; if so, state who, and for what charge?—Four men bring to my house, under charge of Cyphus Wills, Samuel Bryan, George Colson; the four men were Tommy Miles, George Walton, John McCall, and Richard Francis; they were charged with stealing oil, and nails, and rum off the estate.

329. Can you tell the Court the date of this, the day of week, the month, and the year?—October 1st of last year, Saturday.

330. What did you direct should be done with the men?—Take them out; carry them to the bridge to the soldiers, for flog them.

331. How long have you been living at Duckenfield Estate, and is there living on the estate now, any person who has lived there longer than you?—I born there, and I grow there up to now. There is one old ageable man, only able to crawl, but nobody live on the estate, white or black, so long as I have.

332. Can you tell your age?—Not exactly, but I think I am about 60.

333. Did you ever see any of these men, McCall, Walton, and Miles, after they left your yard at Duckenfield, and were they dead or alive?—I saw them dead after, on the 2nd October.

334. *By Prosecutor.*] What day of the week was this?—Sunday.

335. Where did you see them, these three men?—When I coming from Golden Grove, about 10 o'clock in the morning, going to the Iron Bridge, I see them tied to a bamboo fence, a fence made for a rail, on Duckenfield land, lower than the bridge; the bridge is one side, and the fence the other side, lower down. They were dead and tied up, only the head hanging down.

336. Did you look good at them, and are you sure they were the bodies of the same men; tell the Court in what condition you saw the bodies?—I stand up in the road on my beast's back and have a good view of them; they were the same men that sent away from my house; I saw them there; one had an eye knocked out, one had a hole in the skull and the marrow came out, and the third had a wound in his stomach. I stand up and have a view of this.

It being now 4 p.m., the Court adjourns till 10 a.m. To-morrow, the 14th instant.

Fourth Day, 14th December 1866.

On Friday, the 14th December 1866, at 10 a.m., the Court re-assembles pursuant to adjournment—Present, the same Members as yesterday, and proceeds with the Examination in Chief of Peter Phillips.

337. *By Prosecutor.*] Do you know the grass piece in which the three men, Miles, Walton, and McCall were said to have been buried?—Yes. 14 Dec.

338. Did you ever know that grass piece to be used as a burial-ground?—Never yet.

339. Is there a cane piece next to the grass piece in which the bodies were said to have been buried?—Yes; over the barricade there is a cane piece.

340. What divides the cane piece from the grass piece?—The barricade; a ditch that divides it.

341. What was the barricade made for, and what purpose does it serve?—It was made for to keep back the water when the river is high.

342. Through what land does that water come which would go into the works but for the barricade?—Through Duckenfield land the water is come.

343. What part of Duckenfield land?—Through "Hard Time" piece, and through "Cotton-tree" piece; "Hard time" piece is on the left, and "Cotton-tree" piece on the right of the road that leads from the Iron Bridge to Duckenfield works.

344. Does the water come through any land not in canes?—Come right through the grass

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piece and mount the bank from the river, go over to the canes.

345. What grass piece?—Duckenfield grass piece.

346. What is the name of the grass piece?—I do not exactly know the name, but we always call it "West" grass piece, Duckenfield.

347. Do you know where the Post-office is?—Yes, next to the road leading to Amity Hall; the road leading to Duckenfield works, and the road leading to Golden Grove; there are three roads; the grass piece just before the Post-office is Duckenfield land, just over the road.

348. Did you see a grave being dug near where you say you saw the three dead bodies tied up?—Yes; on 22nd October last year I saw a grave dug by some men; I stand up in the road and look at them.

349. In what land was that grave dug; tell the Court particularly?—The grave dug in Duckenfield land, in the "North" grass piece of Duckenfield land.

350. You have spoken of a road to Golden Grove, a road to Duckenfield works, and a road to Amity Hall; does the road lead to any other place, the straight road from Golden Grove past the Post-office?—The straight road lead to Amity Hall.

351. If you come from Golden Grove, go past the Post-office, and go on the straight road, where will you get, if you are not going to Amity Hall or Duckenfield?—If you do not go to Amity Hall, then the road divide and go to Holland Bay.

352. How far is that land, or North grass piece from the Post-office, I mean the grass piece in which you said you saw a grave being dug?—Not far at all; I do not measure it, but it is about a chain and a half; about 80 feet.

353. Do you remember when the martial law was?—Yes; in October last year.

354. Did you see McCall, Walton, and Miles at any time during martial law?—

The Prisoner objects to this question for the following reasons:—

The objections are: 1st. The names of the men, the subject of this prosecution, are positively stated. 2nd. The witness has already answered as to the dates when he took prisoners, and saw them on a bamboo rail. 3rd. This is an attempt to alter those dates by a question put in direct positive terms as to most material points, broadly pointing out an answer to material facts, namely, martial law time, and the burial of the three men.

The Court can judge for itself from evidence already given, whether the witness has or has not sworn as to any particular time during martial law.

The Prosecutor presses the question, but makes no reply to the objections raised, and leaves the matter in the hands of the Court.

The court is cleared for deliberation.

The Court decides that the question is admissible, and being reopened, this decision is announced, and the witness directed to reply to it.

Witness.] After that, they were taken from my house to the bridge and killed; I see them no more.

355. *By Prisoner.*] Are you the same Peter Phillips who gave evidence at Up Park Camp on the 16th October this year?—Yes.

[The Witness withdraws.

Eleventh Witness for Prosecution.

CYPHUS WILLS, a Constable at Duckenfield, being duly Sworn, is questioned by the Prosecutor.

C. Wills.

356. *By Prosecutor.*] Do you know the Duckenfield Post-office, and the Iron Bridge near to it?—Yes.

357. Do you remember the time of martial law, if so, tell when it was, as near as you can?—I remember October last year.

Regimental No. 476. Serjeant John William Allen, 3rd West India Regiment, is sworn to act as interpreter, and interprets the remainder of this witness's evidence.

358. Did you go to the Iron Bridge with anybody, and tell whom you went with, and when you went?—I went to the Iron Bridge with bookkeeper Bryan, John Cashee, and only the prisoners, four of them; one got away, three go to the bridge; this was 21st October last year.

359. What were the names of the prisoners?—One was Tom Mell, Richard Walters, Richard Francis, who got away, and John McCall; John McCall's father was my countryman.

360. Whom did you give the prisoners to, when you got to the Iron Bridge?—I gave them to the officer; I do not know his name; and the officer ask what they brought the prisoners for.

361. Whom did the officer speak to?—To bookkeeper Bryan.

362. What did they do with the prisoners?—Officer ask Bryan what the prisoners done; Bryan say they thieve rum and nails; that he brought them for to flog. The officer turned round and go to the doctor, and the doctor come and ask what they bring prisoners for, and Bryan say same words, thieve rum and nails; he brought them to flog. Doctor say they must be shot; soldiers take the prisoners from me. When the soldiers take the prisoners from me, I turn back about two or three chains, then I hear 10 guns shoot. When I turn back, it was to go to Duckenfield.

363. Did you see what they did with the prisoners after you gave them up, and before you turned back?—When they take the prisoners from me, I turn back; I did not see.

364. Where did they carry the prisoners to when they took them from you and Bryan; tell what you saw yourself?—The doctor gave the soldiers orders to shoot prisoners; then I turn back.

365. Did you ever go back to the place?—I go back the next day, when I come back from Golden Grove.

366. What did you see when you went back the next day?—I saw the dead bodies tied to the bamboo fence, with their hands behind their backs

backs, and their heads so (*illustrated by bending the body well forward, with the head hanging down*).

367. What dead bodies did you see the next day; tell the names?—I see John McCall, Tom Mell, and I see Richard Walters.

368. *By Prisoner.*] Are you the same person called Cyphus Wills who was examined as a witness in October last, before a court martial on oath, at camp?—Yes.

369. Did you know of your own knowledge at the same time that it was the 21st October 1865 when you say you took prisoners, or did not somebody else tell you the date?—No. Gentleman tell me at Golden Grove. Gentleman tell me it was 21st when I carry the prisoners. Gentleman tell me next day, Sunday, was 22nd, when I go to Golden Grove. Sinclair told Bryan on Sunday that yesterday was the 21st, and I hear it and put it in my head.

370. Did not Bryan and Coshee turn back with you at same time to go to Duckenfield, after the prisoners were delivered up?—I leave Bryan behind.

371. Did you not say just now that gentlemen tell you to say at camp, that you must remember that it was the 21st and 22nd?—Yes. Mr. Sinclair call all three at Golden Grove, Peter Phillips, Bryan, bookkeeper, and me (that was Sunday), and say, "To-morrow must get ready to work in the field—all the gang."

372. Who was it told you to remember when you went to camp to say that it was the 21st and 22nd?—Same way I hear from Mr. Sinclair at Golden Grove, and I put it in my head.

373. Did you not swear before the court martial at camp that it was Bryan who told you the 21st October, last year, was the day you took prisoners to Iron Bridge?—No; I say Mr. Bryan call me to take the prisoners.

374. Have you seen George Manning or Anderson since you gave your evidence on oath before the court martial at Up Park Camp?—I see them here, but not at Windward Duckenfield way. I see Mr. Manning even yesterday and to-day. *C. Wills.* 14 Dec. 1866.

375. Do you know if George Manning is connected with the Maroons; has he not a son by a Maroon woman?

Before this question was read out by the Deputy Judge Advocate, the Court is cleared by the President's order. On being reopened, the President informs the Prisoner that the Court considers the question objectionable.

The Prisoner requests that the question may be recorded. This is done accordingly, but the Court rules that it shall not be replied to.

376. Did you not see Maroons come about Golden Grove and Duckenfield during martial law. Do you know Captain Mends, of the Maroons?—Yes; I see Maroons come to Duckenfield during martial law. I do not know Captain Mends.

377. Can you read or write?—No.

378. *By Prosecutor.*] You have said Mr. Sinclair told you and Bryan and Peter Phillips what the day of the month was, on the Sunday, at Golden Grove. Tell the Court all the words, and the exact words, Mr. Sinclair used in telling you this?—Mr. Sinclair tell him, "must carry the gang on Monday, 23rd, for work; for break bank for sugar cane."

379. *By Court.*] At what hour on Sunday did you see the three dead bodies which you say were tied to the rail?—I can't tell; I have no watch.

380. Did the 10 guns you heard all go off together, or how?—No, they not go together; they go one, one, one, close together.

381. Will you count ten (10)?—Witness complies (*rapidly counting on his fingers till stopped at number sixteen*).

[The Witness withdraws.

Twelfth Witness for Prosecution.

GEORGE COLSON, Constable on Duckenfield Estate, being duly Sworn, is questioned by the Prosecutor.

382. *By Prosecutor.*] Do you remember martial law? if so, tell when it was?—Yes, it was 21st October, last year.

383. Do you remember doing anything in respect of prisoners? if so, tell the Court what you did, and when?—Saturday; I did bring four prisoners to the soldiers at the Iron Bridge, and one get away, and I brought up three. I do not know the date more than Saturday.

384. *By Prosecutor.*] Who were the prisoners? Tell their names, and where did you bring them from?—Richard Walton, Tommy Miles, and John M'Call. The name of the one who get away is Richard Francis. I brought them from Duckenfield, and took them to the Iron Bridge to the soldiers.

385. What month was it, can you remember?—In October last year; I do not know the year.

386. To whom did you deliver the prisoners when you got to the Iron Bridge?—The officer, Mr. Cullen.

387. Who went with you and the prisoners from Duckenfield to the Iron Bridge?—Bryan and Cyphus Wills.

388. What was done with the prisoners when you arrived at or before you left the Iron Bridge?—The officer take the prisoners away from me, and went up to the office door, and after that called to the doctor. What him and the doctor say I do not know; and after the discourse done they loose the prisoners the one from the other, and tie one against the Post-office post; and Mr. Manning come out and said "Loose them from the door;" and after they loosed them, the soldiers and the doctor marched them down the road; the road that go away to Holland. As you go along the logwood hedge on the side, and when the logwood hedge end, they tie them to the bamboo; and after them tied, I heard the gun that was fired before I move off. *G. Colson.*

389. What office door do you mean when you say the officer went to call the doctor?—The door that goes into Mr. Manning's private room.

390. *By Prisoner.*] Were you examined on oath before a court martial at camp in October last about these same matters?—Yes.

391. When examined on oath before, did you not

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not state that there were people standing between you and the officer, near the Post-office?—Yes.

392. Did you not swear before the same court martial as follows:—"I was anxious to go, and I walked off a chain, and presently I heard the voice of soldiers say 'shoot,' but who said shoot I cannot tell if any other person else. I turned back and hurried away," or words to that effect?—That is true.

393. Did you not also swear before that court martial as follows:—"After I see them tied, I could not bear to see them any more, the soldiers seemed so anxious to shot them; I turned away and come back to my place," or words to that effect?—Yes, that is true.

394. In answer to questions on oath before the same court martial, did you not state that you remembered "soldiers coming to Iron Bridge during martial law; they came on a Sunday." Were you then asked before that same court martial, "Are you sure it was a Sunday?" Did you not answer, "It was not Sunday?" And were you then asked, "When was it?" And did you not then answer, "I cannot tell the right day when we came to the Iron Bridge," or words to that effect?—I do not recollect saying "it was Sunday;" I did say "it was not Sunday," and I do not recollect saying "I cannot tell the right day when we come to the bridge."

395. Did you not swear before that same court martial as follows, or words to the effect, "I returned the same day to Duckenfield with Cyphus Wills"?—Yes, I recollect saying that.

396. Did you not state just now that you do not recollect the day or date when soldiers came to the Iron Bridge?—Yes.

397. Did you not swear before the same court martial on oath that you did not tell the busha of all this, and that you did not go to Spanish Town and give evidence on oath?—Yes, I did say so.

398. Did you not see Maroons during martial law about Duckenfield and Golden Grove?—I hear of them, but I never see them.

399. *By Prosecutor.*] You have said you do not recollect the day the soldiers came to the Iron Bridge, but do you recollect the day you went to the Iron Bridge with prisoners, and found soldiers there?—Yes, Saturday day.

[The Witness withdraws.

Thirteenth Witness for Prosecution.

ROBERT SPEED, Boatswain and Constable at Holland Bay Wharf, being duly Sworn, is questioned by the Prosecutor.

R. Speed.

400. DID you do any duty as a constable during the rebellion?—Yes.

401. Did you know three men named Miles, Walton, and McCall?—I did not exactly know them myself, but I know them by name; I was at the Iron Bridge by Duckenfield side of Plantain Garden River, when the three men came there; I was there long time before they come.

402. Can you tell what time, the day of the week, and month, and the year, when you saw them at the bridge?—That was on the 21st October, a Saturday day; last year, October.

403. Who brought the three men to the bridge?—The constables from Duckenfield, Colson, old Wills, and Bryan.

404. What did you see done to the three men when they were brought in and until you left?—When the prisoners come in I hear a racket, and the soldiers hear it, and half run to the bridge, and half run the Duckenfield way, and them that went Duckenfield way met the three men with the constables coming in, and I, sitting down on an empty box, a side of the shop, and holding my horse in my hand. After they come in the soldiers ask the constables what they brought the three men for; they say they brought them there for flog; asked them what they done, and they say steal nails; asked them where, and they say, Duckenfield Estate; and after that the doctor was in Mr. Manning's little place, and when he come out he see the soldiers glad and enjoy themselves, and he speak to them, and say, "they must quiet themselves;" then he axed the constables what they brought the men there for; they tell him for flog; he axed what them done; say thieve nails; axed them where; they say Duckenfield Estate; then the doctor and the officer asked Mr. Manning if he got any twine to make a cat, and he reached the twine from where he is, and they give the twine, and they getting about to make the cat—Corporal Hunter. Well, I see the doctor and the officer go away bridge way, and then they come back, and they done away with the cat.

405. After they done away with the cat, what did they do with the prisoners?—They loosed the prisoners from where they is; they were tied against the post of Mr. Manning's porch; then the doctor and the officer order the soldiers to carry down the prisoners, and after they go down I never move, stand for a while, and then I heard the report of a gun; then after I heard the gun my mind tell me the men were shot; after a time I budge, I rise up and go a-piece; I see the three prisoners shot, and one of them have his brains hang down on the forehead; and I would not go down that way, but went over the bridge, and go through the works to Holland Bay; this was 21st Saturday day.

406. Do you know the name of the doctor of whom you have been speaking, if so state it?—I do not know his name.

407. Did you go back again that way, and if so, state when, and tell who went with you, and on what business?—I went back next day, Sunday; Mr. Brooks went with me, to take up some prisoners at Holland Estate.

408. How many prisoners did you take up?—I don't exactly positive, but about 30.

409. Where did you go with the prisoners?—To Golden Grove Estate.

410. Did you see anything as you went with these prisoners, before you got to Golden Grove Estate?—Yes, when I went to the bridge, Mr. Brooks order me to go by the road; well, I saw the three men tied, and all the prisoners saw them, and they was miserable to look upon, the bodies swell up.

411. Are you quite sure it was the bodies of the same three men you saw brought to the bridge the day before?—The same three men.

412. When you saw the bodies how were they, that

that is, in what position?—They were with their backs to the grass piece, their heads hang down, and their hands tied to the fence; the fence was bamboo with logwood alongside. (*Witness illustrated the position by standing up, bowing his head, and placing his arms straight down by his sides.*)

413. Were there any other constables with you in charge of these prisoners?—Yes, there were pressed constables, and rural constables; Richard Hall, Burke, Bevis, Hunter, and Johnny Hamilton were constables; I do not recollect the names of the others.

414. *By Prisoner.*]—Are you the same person who was examined on oath before the court martial at Up Park Camp in October last, and before the present members of this Court at the same time?—Yes.

415. When you were examined on oath before the same court martial, did you ever mention the name of Mr. Brooks as a person who went with you back to this same place near Iron Bridge, or even mention your taking prisoners down there?—No.

416. Did you on your examination before the same court martial state that any pressed or special constables or rural constables were with you when you took prisoners in charge the morning you state, or is this the first time?—I never repeat that in camp.

417. Who is Mr. Brooks?—He is a bookkeeper on Holland estate; from that he move to Golden Grove.

418. Is that Mr. Brooks now a bookkeeper at Golden Grove?—Not now.

419. Did you not swear before that court martial as follows, or words to that effect—"They took prisoners down a little more from the shop-way; I stand for a while or two, sitting down on a box at the shop door, holding my horse at the same time. I heard the report of the gun; I was still sitting at the shop?"—Yes; I said so.

420. Did you not swear before the same court martial as follows, or words to that effect—"I go away; heard a gun by the smith's shop; I did not reach quite down"?—No; I never said "I go away;" I said, "I stood at same place," and heard the report of the gun; after that I budge. *R. Speed.* 14 Dec. 1866.

421. Think of what you are going to say: did you ever with your own eyes actually see soldiers shooting at the prisoners at that bamboo fence; did you not swear before the same court martial that you only heard a gun, and that you were, when you heard the gun, sitting at the box close to the shop, holding your horse?—Where I sat down I could not see them; but when I heard the gun, and after a time I budge, then I see the soldiers on the spot. I said at the last court martial what you read out.

422. You swore just now that your mind gave you the men shot, and you just go and have a cast: did you not swear before the same court martial as follows, or words to that effect—"I peeped at the prisoners then" (*meaning when they were tied to a fence*)?—Yes; after I budge.

423. Before that same court martial did you to a question, "You swore on Saturday that you could not tell the month when you were sick, with two doctors attending you: how is it you were able to pick out the 21st of October last year as being the exact day of the month and the year when all this happened," or to that effect, swear, in answer, "I knew the exact day of the month; I was obliged to know it, because I carried in my head; but the time I was sick, I can't tell that exactly"?—Yes; I said that at camp.

424. Did you also then swear, "I did not get any one to do it for me," meaning to put down the date?—Yes.

425. Were you also asked the question before that same court martial, "What day the rebellion break out?" Did you answer, "I think it was a Saturday the rebellion broke out, but I don't know the day of the month"?—Yes, I did.

[It being now 4 p. m., the Court adjourns till 10 a. m. to-morrow, the 15th instant.

Fifth Day, 15th December 1866.

On Saturday, the 15th December 1866, at 10 a. m., the Court re-assembles, pursuant to adjournment; present the same Members as yesterday, and proceeds, with the Cross-examination of Robert Speed.

426. *By Prisoner.*] Did you not then also swear before the same court martial to the following question put to you—"What are the names of the prisoners?" "I am not acquainted to know the names of the prisoners," or words to that effect?—Yes. *R. Speed.*

427. Did you not swear before the same court martial that you never gave evidence on oath to any one before that time on this subject?—Yes, did.

428. Did you not, before the same court martial, in answer to the following question, swear—"Did any one go down with the soldiers; if so, state who?" answer, "Well, I really cannot tell"?—Yes.

429. Have you seen Manning or Anderson since you gave your evidence before the court martial at Camp?—Yes; I did see them, but me and them have no talk. I see them in the street, but not in Manning's house; I not been there at all.

430. *By Court.*] About what time in the morning was it when you passed the Iron Bridge with the prisoners on Sunday?—I can't know exactly, but I think about nine o'clock.

431. Did you find the soldiers at the Iron Bridge when you came there, or did they come after you, on the Saturday?—I find them at the bridge.

432. You have said that you heard the report of a gun: can you tell how many reports you heard?—More than one report; more than one gun (described as "bim, bim, bim"), but how many I cannot tell.

433. How much time was there between the "bims"?—I cannot say.

[The Witness withdraws.

Fourteenth Witness for Prosecution.

RICHARD FRANCIS, Labourer, residing at Dalvey, being duly sworn, is questioned by Prosecutor:

R. Francis.

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434. *By Prosecutor.*] WERE you ever taken up as a prisoner, and who took you up?—Yes; Bryan took me up.

435. Any body with Bryan?—Yes; Cyphus Wills and Mr. Colson.

436. When was it, and what happened?—October last year, a Friday. Halliday take me to mend fence, to prevent the cattle from destroying the canes. After that they take me up to Peter Phillips' house, and from there to the Iron Bridge; when I going along the road I escape, upon the barricade, close to the Iron Bridge, and I run into the canes.

437. Was any body taken up with you; if so, state who?—Richard Walton, John M'Call, Tommy Miles, and myself.

438. Did you go to the Iron Bridge, or did you escape before you got there?—I make my escape before I reach the Iron Bridge.

439. Were you tied in any way when you left Duckenfield estate; that is, while you were in custody?—Tied this way by the hands (*pointing to his wrist*); me and Walton tied together, two and two going along the road.

440. *By Prosecutor.*] Did you see anything which made you try to escape?—I see plenty of soldiers at the Iron Bridge.

441. How did you manage to escape?—It was God loosed me; the Almighty. I not tied too tight.

442. What did you do after you escaped?—I run away, and stay in the bush for four weeks.

443. How long did you remain in the canes?—From the time I get into the canes I stay till almost night; then I start straight to the bush.

444. Did you hear anything while you were in the canes?—I hear about four gun fire.

445. When do you say all this took place?—October, last year; I do not know the day of the month, but it was a Friday.

446. Did you take any nails from Duckenfield estate?—Yes; a little.

447. Did you carry back the nails?—Yes; I carry them back.

448. What day did you carry back the nails?—On Saturday.

449. *By Prisoner.*] Did you ever give any evidence on oath before the Queen's Commissioners, or anywhere else on oath, before to-day?—Yes; at Spanish Town, and at Camp.

450. Where were the canes into which you run; on which side of the road as you go from Duckenfield, were these canes?—On the right hand as I go from Duckenfield to the Iron Bridge.

451. Were you taken quite up to Iron Bridge at first, past to the Post-office by constables, or did you escape before you got to the Post-office?—I do not go to the Post-office at all.

452. Did you not make your escape before you got to the "Cotton Tree?"—Yes.

453. What bush was it you hide yourself in for four weeks; did you see any one at all that time; did you keep quite silent the whole four weeks?—I was in the "Light House" bush. I saw no one all the time. I kept silent the whole four weeks. I eat nothing at all but roast crabs.

454. Have you seen George Manning, or Anderson, since you were examined at Up Park Camp?—Yes, I see them, but me and them never hold any conversation.

455. Were you before the Royal Commissioners at Spanish Town asked the question, "Had you been hiding there long," meaning the cane-piece; did you answer "No, I cannot tell?"—I cannot recollect.

[The Witness withdraws.

Fifteenth Witness for Prosecution.

SAMUEL BRYAN, Bookkeeper on Duckenfield Estate, being duly sworn, is questioned by Prosecutor:

S. Bryan.

456. *By Prosecutor.*] DID you take any prisoners from Duckenfield estate; if so, state how many, and tell their names if you know them?—I remember taking four prisoners from Peter Phillips' house down to the Iron Bridge, on the 21st October last year. The names are, Thomas Miles, Richard Walton, and John Mc Call; the other was Richard Francis, who made his escape on the way.

457. How many prisoners, then, did you take to the Iron Bridge?—Three.

458 What did you do with these prisoners when you arrived at the Iron Bridge?—I delivered them to Corporal Beckett, a yellow-skinned man. He belonged to the 1st Regiment; black soldier regiment.

459. What was done with the prisoners, as far as you saw?—They were tied at the post before Manning's shop-door, for a short time; then they remove by the soldiers down to the bamboo-rail, where they were shot at the fence.

460. Did you see anything done before they were sent down?—I saw Dr. Morris and Ensign Cullen whispering together.

461. Did you hear anything said by Dr. Morris, or by any other person in his hearing?—I heard when Dr. Morris told four of his men, the soldiers, to take up their rifles. He says, "Four of you, get up your rifles," and they marched the men straight down to the rail, and Dr. Morris himself went down to the spot.

462. Had you before this mentioned to Dr. Morris, or in his presence, the charge you had against the men, the prisoners?—I did, in his presence. I told Dr. Morris the charge of what the men commit; stealing rum, nails, and other things from the estate, and I beg he will flog them and let them go.

463. Had you told that charge to any one before telling it to Dr. Morris?—I told it to Ensign Cullen as well.

464. Did you see or hear nothing more before the

the prisoners were marched away down the road?—I heard when the soldier say to the three men, the prisoners, "You ought to say your prayers; I will let your bloody soul fly in five minutes."

465. Were you sitting, and, if so, on what; or were you standing when the prisoners were taken down the road?—I was sitting down on my horse back.

466. Whereabouts was your horse standing?—Just by the upper door of Manning's shop; by the upper door I mean nearest the Bridge way.

467. From that place and position, did you see the soldiers who went down the road?—Yes.

468. Did you see what was done with the prisoners; if you did, tell the Court all you saw?—I saw when the soldiers take them down to the rail, and as fast as they take them, one by one, they shoot them. They tie one to the rail and shoot him, and then another, and shoot him; and the other one the same way. I saw this with my two eyes, just as I see you; and I saw when Dr. Morris take one of the rifles, load it, and fire it himself; make the last volley; and he and the rest of the soldiers all walk down to the shop.

469. On which side of the road were the prisoners tied; speak as if you are looking down the road towards Holland Bay?—On the top side of the road; on the grass-piece side, on the right hand.

470. On which side of the road did the soldiers stand?—On the left-hand side.

471. Did you see the prisoners from where you were after they were tied to the bamboo-rail, and how did you see them?—I saw them from where I was sitting on horseback, with their hands tied together to the fence in front of them, and their backs to the road.

472. Did you go back to the Iron Bridge, and when, and did you go down to the bamboo-fence?—I returned to the Iron Bridge on the 22nd. I rode up to the fence where the three men were hanging dead, in this way (*placing his hands together in front of him and hanging his body down and on one side*). The whole of the body not on the ground. I saw all the heads mashed, and the brain going out of all of them. I turned my horse back, and went right home to Duckenfield.

473. Do you know the grass piece to the fence of which those bodies were tied, does it belong to Duckenfield?—Yes.

474. What is next to it, what land, that is what cultivation, and whose land is it?—Cane field, belonging to Duckenfield.

475. What divides the grass piece from the cane field?—Another logwood fence run upon the barricade.

476. What do you call the barricade, and what purpose does it serve?—It is a deep trench dug along to keep the water from coming into the canes: when they dig, they heap up the earth on a high bank, then on top of that bank the logwood hedge is, and that is the fence divide the grass piece from the canes.

477. Where from does the water flow, which that barricade keeps out?—From the Plantain Garden River.

478. Over what land does it flow between the river and the barricade?—Duckenfield estate; it is same barricade that run through Golden Grove and on to Holland.

479. Over what part of the Duckenfield land does it flow?—When the river flood, it run right through the cane fields, just opposite where these men were shoot.

480. Do you know Dr. Morris, that is, can you identify him if you see him?—Yes.

481. Point him out, if he is in this room?—(*Witness identifies Assistant-surgeon Morris.*)

482. You have said the water flows from the river to a cane-piece just opposite where the men were shoot, is there any land between the cane-piece and the place where the men were shot?—There is a grass piece there, where the men were buried; when I come to the parish, that is the first pasture I take my horse to; I take him there myself, and there was no grave there.

483. *By Prisoner.*] When you returned to Duckenfield on the morning of the 22nd, and as you say, saw the dead bodies tied on the fence, did you return to Duckenfield and leave the bodies tied there?—Yes, tied there.

484. Where were you the rest of that Sunday after you left the bodies tied as you say?—I was at Peter Phillips' house the whole day after I returned to Duckenfield.

485. Are you the same Samuel Bryan who gave evidence before the court martial at Up Park Camp, about these matters?—Yes.

486. When you said you took the prisoners to the Iron Bridge, did you mean to the Iron Bridge itself, or only to the Post-office?—I took the prisoners before the shop door, that is the Post-office.

487. Did you go any further than the Post-office with the prisoners that day?—No farther than the Post-office.

488. Did you not, as to the time of the actual firing, swear as follows, before the court martial: "I was sitting down at the front of the shop-door on my horse," meaning at the time of the firing?—Certainly; and I was sitting down on my horse back.

489. Did you not swear at the court martial, at Camp, as follows, or words to that effect, "After they went to the rail, I heard the report of the guns; I was sitting on horseback in front of the shop-door, and could only see the shoulders of the prisoners"?—Yes, I did.

490. Was it not close to the shop-door that you were sitting on your horse, near the posts of the shop?—No, I was not near the post; I was on my horse, as I tell you just now, and I was in the middle of the road.

491. Was your horse one of the common-sized ponies of the district?—He is not a very big horse, but a good sized horse; size of most of the other horses.

492. You say the soldiers stood on the left side, and the prisoners on the right side, were they then just on opposite sides of the road to one another?—Yes; opposite.

493. How long did you remain at the Post-office that day you say you took prisoners?—Well, I remain about five minutes or more; I have no watch with me, but I may say five minutes or more.

494. In answer to question before that court martial, did you not answer as follows, "I did not stop any more; I turned my horse's head and went home"?—Yes, I did.

495. What time of the day did you arrive at the Iron Bridge with the prisoners which you say you took there?—About 12 o'clock.

496. Did you not swear, at the court martial, held at Camp, in answer to the following question,

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tion, "Do you know their names," (meaning prisoners' names), "I am not acquainted with their names, as I only come to the parish lately,") or words to that effect?—I did; I know their names now, because I read them in the papers.

497. Have you seen George Manning, or Anderson, since you gave your evidence before the court martial, at Camp?—Yes, both; I see them in Kingston, after I gave my evidence at Camp; I always see Manning every day in Kingston, and Anderson too.

498. Have you seen Donaldson and the other witnesses, who gave evidence at Camp, since you gave your evidence there?—I see Donaldson and some of the witnesses, not all of them.

499. Were you present when Anderson, the teacher, was flogged during martial law; where and when was that done?—I stated already, that I saw Anderson flogged at Golden Grove during martial law; it was 21st October, same, very same day as the men were shoot.

500. Was he flogged on a Saturday, or a Sunday?—He was flogged on 21st October, and 21st October was a Saturday.

501. Was that Saturday the only day you saw Anderson flogged at Golden Grove during martial law?—Yes, but I did not see him flogged; but I was at Golden Grove that day, and know he was flogged.

502. Did you not swear before the court martial when you gave evidence before as follows, "I saw him (Anderson) flogged at Golden Grove, but I cannot say what for"?—Yes; but I mean I heard of the flogging, but I did not see it; people speak of it.

503. Do you know of your own knowledge, that George Manning was being searched for by troops from Golden Grove during martial law?—I heard some of the soldiers always ask for Manning. I see his own son, who was a volunteer, at his place, but no other troopers there.

504. You spoke of Manning's son, a volunteer; does he live with his mother, and who is she?—Manning's wife is the mother of Manning's son, she lives in town, in Kingston; but I do not know if the young man live with her in the same yard; I do not know who she was before he married her.

505. What is Manning's wife; is she a creole or a maroon, do you know or not; how do you know she is in Kingston?—I do not know what she is; I never see her in Saint Thomas in the East since I come to the parish; but I hear she lives in Kingston.

506. Did you mention Corporal Beckett's name when you were examined on oath before at Camp; did you not swear then as follows: "I delivered them to Ensign Cullen and Dr. Morris" (meaning the three prisoners)?—I did mention Corporal Beckett's name. I said at Up Park Camp that Corporal Beckett was the first person come to me, and I tell him the charge of what the men commit, and he says, "Let me go and call Ensign Cullen;" and Ensign Cullen came to me and I relate the same story to him, and he says, "Let me go and call Dr. Morris;" and Dr. Morris came, and I tell him the same. I use those words at Up Park Camp which you read out, as well as use Corporal Beckett's name.

507. Do you know Dight, the bookkeeper at Duckenfield; was he prevented by illness from attending as a witness on the former case?—Oh, yes; I know him; I know he was sick. Sickness did not prevent him from come, because he was working.

508. Don't you know that he was so ill that he was nearly dead when Mr. Georges came down?—He was not so ill as to nearly die; he have a little fever, and he go to his room for two days, and next day he was out at his work.

509. Had you a conversation with, or were you in company with Dight, alone or in the presence of another man, at or near the barracks at Duckenfield about the same time you first received your summons to give evidence, or just before you received that summons about these matters, and before you went to obey your summons?—There was other people there; a mason, name of Gibson; Mr. Rutty; young Mr. Snaith; and plenty other people beside Dight.

510. In that conversation with, or in the presence of Dight, did you say to Dight, or in his presence and that of Gibson, the mason, "that you wished every white man was hanged," or "those white buggers ought to be hung," or words to that effect?—I deny that already in Up Park Camp if I said so; Dight might have said something to me. It is a concocted plan. I deny it.

[At 2 p.m. the Court adjourns till 10 a.m. on Monday next, the 17th instant.

Sixth Day. 17th December 1866.

On Monday, the 17th December 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment; present, the same Members as on Saturday, the 15th instant; and proceeds with the Cross-Examination of Samuel Bryan.

S. Bryan.

511. *By Prisoner.*] You say, "If I said so, Dight might have said something to me;" do you know that Dight did report about you in respect of these same statements to Mr. Sinclair, just before, or about the time when Ensign Cullen came with Mr. Georges to Duckenfield in Septimber or October this year?—No, I never heard a word of it till I came to Up Park Camp, and it was asked to me as a question. Mr. Williams did ask me before Mr. Sinclair and Mr. Georges that Sunday night when Ensign Cullen was there, and I deny it then.

512. Was not that before you gave your evidence at Up Park Camp?—Before I gave the evidence at Up Park Camp.

513. Do you not also know that Dight took down your words in pencil, and reported them to Mr. Georges or Mr. Sinclair just before you saw Ensign Cullen at Duckenfield this year, and before you gave your evidence at Camp?—Not to my knowledge. Dight never said a word to me, nor Mr. Sinclair; and if I had said so, I do believe Mr. Sinclair would have discharged me before now.

514. Are you aware that Mr. Georges and Mr. Sinclair were about to discharge you in last September

tember or October, but were prevented from doing so, during these investigations?—Not to my knowledge. Never heard a word about it. Mr. Sinclair never told me a word about it.

Witness requests permission to correct a mistake he made in giving his evidence on Saturday, as to a date (Questions 499, 500). It was on a Sunday, 22nd, Anderson was flogged, not Saturday, the 21st.

515. Have you seen Anderson or Manning since you gave your evidence on Saturday before this Court?—I never see Manning. I did see Anderson, but have no conversation with him. The reason I remember the date, I have it in my pocket-book. I went on the same day, Sunday, to Mr. Sinclair, at Golden Grove, to get some money, and by making a mistake here about the day, I look in my pocket-book and see the date.

516. Are you sure, now, that Anderson was flogged on the Saturday evening, and not on the Sunday?—I said on the Sunday.

517. How do you know yourself that Anderson was flogged on the Sunday, when you swore that you only heard of the flogging?—On the Sunday, when I went to Golden Grove, I heard of it.

518. What time did you get to Golden Grove on the Sunday?—In the evening, about four o'clock. I had no watch.

519. *By Prosecutor.*] You have said, in cross-examination, that since giving your evidence at Up Park Camp, you have seen Manning and Anderson in Kingston; have you had any conversation with either of them on the subject of this prosecution?—Not on this prosecution. On our private business, but not on this.

520. What sort of colour men are Mr. Georges and Mr. Sinclair?—White men.

521. And were they your employers at the time you are charged with having said something about white men?—They were my employers up to this present moment.

522. *By Court.*] What made you take the prisoners to the Iron Bridge, on Saturday, to be flogged?—We were going to Golden Grove, but when we get near the Iron Bridge we saw the soldiers there, and the constables say it is shorter, so we take them to the bridge. We were going to take them to Golden Grove, because the Kingston troop arrived there that day.

523. At what time, and by what means, did you hear that the Kingston troop arrive that day at Golden Grove?—While I was at Duckenfield, several people pass by and said that plenty of volunteers arrive at Golden Grove, were stationed there; that is how I know it; and that Mr. Sinclair was there, too. It was about mid-day, about 12 o'clock, but I have no watch to know the very particular hour.

524. How long was that before you set out with the prisoners, and how far is Duckenfield from the Iron Bridge?—I think it was about the same time I set out with the prisoners. About a half-a-mile from Duckenfield to Iron Bridge. I never measure the distance from Duckenfield to Golden Grove, and I never time how long I take to walk it; I cannot guess it.

525. Do you pass the Post-office when going from Duckenfield to Golden Grove?—Unless you have occasion to go to the Post-office you do not pass it. The turn of the road is about four chains from the Post-office.

526. From that turn of the road how far is it to Golden Grove?—I can't say. I never measure it.

527. You have said that you were sitting on horseback opposite the shop, in the middle of the road, on Saturday, the 21st, when the shooting took place; describe exactly how much you saw from that position both of the soldiers and of the prisoners?—I could see the back of the soldiers while they were standing in the road, and when they go to the fence, where they were tied, I could only see the head and shoulder of the prisoners; the logwood hedge prevent you from seeing the bottom part of them, only head and shoulder. The time I saw the soldiers' backs they were in the middle of the road, at the same spot where the rail is, where they shoot the men, and those were the men who fired. Their backs were not turned to me, but to the river side. I saw them when they raise their rifles.

528. You have said that one was tied and then shot, and then the next tied and shot; could you see where the other two prisoners were when the first was being shot?—Standing at the road, too, with the soldiers. The soldiers have them in charge.

529. How many soldiers fired altogether; how many fired each time?—I heard four volleys, and Dr. Morris fired the last volley. Three soldiers fired singly; one soldier fired at one prisoner.

530. About what time of the day did you see the bodies, on Sunday morning, at the bamboo rail?—About eight o'clock, but I have no watch.

531. What road did you take after seeing the bodies on that Sunday morning?—Right up to Duckenfield, and I was coming from Golden Grove, and knowing the men were shoot there, I went up to look at them.

532. Were the volunteers in Golden Grove when you left that place on that Sunday morning?—Yes; I left them there.

533. When did you first mention this matter to anyone besides those who saw it?—I cannot remember the first person, but I know I mention it to Mr. Sinclair on the Sunday, the 22nd, and to Mr. M'Dermott, when he returned to the estate. I know I told Mr. Sinclair, because that same day an old watchman was taken up and flogged for stealing things, and that makes me remember I told Mr. Sinclair that the three men were taken up for stealing and shot.

534. How do you know the name of Corporal Beckett?—I was in company with him when the soldiers had been in Plantain Garden River district, and were going on board the "Wolverine." That was Saturday, 14th October. I met them over the river, near a place called Bachelor's Hall. They had been to Bath, and were coming back with Mrs. Shortridge and several ladies.

535. Do you know at which man Dr. Morris fired, first, second, or third tied up, and could you tell, from where you were, whether he had been hit or missed altogether by the soldier who fired at him previously?—I cannot tell.

[The Witness withdraws.

Sixteenth Witness for Prosecution.

LEWIS BLYTH HOLE, Captain 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prosecutor.

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536. *By Prosecutor.*] DID you, in pursuance of orders, send a detachment of soldiers from Manchioneal to any other place, and if so, when and where to, and under whose command, and by what other officer, staff or otherwise, attended?—I sent various parties out on my own order, and in pursuance of orders received. On the day of my arrival, the 16th October, 1865, I sent out a party of 1 sergeant, 12 men, and Dr. Morris accompanied the party. They proceeded to Betty's Hope. On the 17th or 18th I also detached a party. I am inclined to believe it must have been the latter date, as I think on the 17th I gave the men a rest, as they were knocked up, and some had no boots. I have given that date because I went out myself on the 19th, owing to the party which I had previously sent out under Ensign Cullen having failed to reach the place I had ordered them to. I have no memoranda of these dates, but I recollect the 19th, as, on my return that day, I myself received a memorandum from Brigadier General Nelson.

537. Who accompanied the party sent out, as you say, you believe on the 18th of October; that is, what officers?—Ensign Cullen and Dr. Morris were the officers.

538. Where did you send them from, and about how many soldiers, black and white, as near as you can remember?—I sent them from Muirton, and to the best of my belief there were about 50 soldiers of the 1st West India Regiment.

539. Look at the paper writing now produced to you, and say if it is in your hand-writing?—The front part is my writing. I know nothing about that on the back. (*Paper marked* C.)

540. Do you remember when, and to whom, you gave that paper?—I have no recollection whatever about it; I merely recognise my handwriting; and I suppose I gave it to the man whose name it bears; I dare say I had to sign my name sometimes as often as 200 times a day, granting protection to their houses, and passes to proceed to provision grounds, from one spot to another.

541. Did you send a detachment, according to orders or letter, received about or shortly after, the time you have already spoken of, to any other place?—In conformity with orders received from Brigadier General Nelson, I sent a detachment to the Post-office in the Plantain Garden River district on, I believe, the 21st October 1865. This party was under command of Ensign Cullen, Staff Assistant Surgeon Morris, in medical charge. The party was ordered to consist of 50 men; and it proceeded from Muirton, Manchioneal, my head quarters.

542. Was the order received in writing?—Yes.

543. Have you the original, or where is it?—I have not the original; I believe it was attached to the proceedings of the court martial held on Ensign Cullen; at least, I handed it into the Court.

544. Have you a copy of it?—Yes; a true copy, verified by Captain MacLean of the Rifle Brigade.

545. Did you send the party off in pursuance of, and according to that order, and on what day, and at what hour did you despatch it?—I did send a party off in accordance with the order, on the 21st October 1865, at about 5 a.m.; the hour named by Brigadier General Nelson.

546. What order did you give the officer in command?—I gave him no orders, but acquainted him with the instructions contained in the Brigadier General's order, that he should report himself to the officer he would find at the Post-office, and this officer would be in possession of the brigadier's orders, to be carried out by the troops combined.

The Prisoner informs the Court that it is his intention to call Captain Hole as a witness for the defence; and, therefore, requests that he may defer his cross-examination.

The President replies, that this course is optional with the Prisoner.

[The Witness withdraws.

Seventeenth Witness for Prosecution.

CECILIA ROBINSON, residing at Dalvey, being duly sworn, is questioned by the Prosecutor.

C. Robinson.

547. *By Prosecutor.*] DO you know the Plantain Garden River Post-office; who is the postmaster there now, and who was during martial law?—Yes, I know it; Mr. Manning was and is now the Postmaster.

548. Whose service were you in during martial law; and as what?—Mr. Manning's, as cook.

549. Do you remember any soldiers coming to the Post-office? if so, state as near as you can, what time?—I remember in October last, a Saturday, the soldiers come down to the Post-office.

550. Has any Christmas passed since?—No; no Christmas.

551. How many months ago do you think it is?—It is over twelve months.

552. Where did you see the soldiers come from; what officers were with them?—They come down from Manchioneal; Dr. Morris and Ensign Cullen were the officers.

553. Did you see any prisoners brought to the Post-office while the soldiers were there?—Yes, I saw three of them; one was Richard Walton, one was John M'Call, and one was Tommy Miles.

554. Who brought these prisoners to the Post-office?—I did not see who brought them, but when I come round from the kitchen, I saw them tied.

555. What did you see them tied to?—Tied to the post; there is a shed outside, and it has posts; I cannot say which of the posts it was.

556. Did you see any constable there whose name you know?—No, I did not see the constable, but I saw the book-keeper, Bryan.

557. Did you hear what the prisoners had done; what they were brought to the Post-office for?—I hear them steal nails at Duckenfield.

558. Where was Dr. Morris when the prisoners were brought to the Post-office; that is, when he came, where did he go to?—He was inside the

the Post-office, on the table; in the apartment where Mr. Manning dine, he was.

559. Did you take anything to Dr. Morris while he was in the room, where you say he was on a table?—Yes; him ask for a cup of tea, and I went and give it him.

560. After that, did you see him anywhere out of that room?—After that he drink the tea, he went outside with Mr. Cullen.

561. Did you see what was done to the prisoners when Dr. Morris was outside?—Yes; I saw one of the soldiers loose the three prisoners, and go down the road; the soldiers, Mr. Cullen, and Dr. Morris, and I went to the kitchen.

562. In what direction down the road did they go; that is the road leading to what place?—The road lead on to Holland Bay.

563. Had they stopped walking down the road when you went into the kitchen?—When I went to the kitchen, I saw them stop on the road.

564. Did you hear anything after you got into the kitchen?—When I hear the gun fire, I come out of the kitchen.

565. Did you see the three prisoners when you come out of the kitchen?—No, I did not.

566. Did you see them at all that day afterwards?—No, I did not see them at all.

567. Did you see them at any time after that day; if so tell when and where?—I never see them at all.

568. Where did you go the next day?—I was at the shop, cooking.

569. Did you walk out that day (Sunday) at any time?—Yes, I walked down the road.

570. Which road, and what did you see?—When I go down Holland Bay-road, not very far from the bridge, I saw the three men who was shot, Richard Walton, Tommy Miles, and John M'Call.

571. Were they alive or dead?—They were dead.

572. How did you see them, and where, in what position?—I saw the three of them tied, separate to the front, and Richard Walton bent down this way (*stooping forward*), I saw nothing more, only the brains mashed up, the head mashed up of Richard Walton.

573. What do you say the three men were tied to?—They were tied to bamboo fence, fence against the logwood.

574. What time of day do you think it was on Sunday when you walked down and saw the three men dead?—About nine or ten o'clock, morning.

575. Did you see any people come after you walked down and came back; if so, tell who and what you saw done by them?—I saw some people come from Amity Hall and bury them, I do not know them. I know them, but not their names.

576. How do you know they buried the bodies; did you see them buried; or what did you see to make you say so?—I did not see them buried, but I saw them digging the grave.

577. Are you now in Mr. Manning's service?—No.

578. Do you know Dr. Morris by sight?—Yes.

579. Stand up, and if you see him in this room point him out?—

Witness identifies Assistant Surgeon Morris.

580. *By Prisoner.*] Were you ever brought before Ensign Cullen, at Manchioneal, and charged with having stolen a soldier's havresack and money?—I was before Mr. Cullen, and a man said I had taken 2 *l.*; but I never take it.

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581. Are you the same person who gave evidence before the court-martial at camp?—Yes.

582. Did you not swear before the court-martial, at camp, as follows, or to that effect, "It is a spite that Dr. Morris and Ensign Cullen have against me"?—I don't remember I say so.

583. Did you not swear before that court, as follows: "I am not positive if it is three graves or one"?—I recollect I say, "I don't know if they buried in different graves."

584. Did you not also swear before that same court, "I did not see when they fired, I went into the kitchen"?—I don't remember.

585. Did you not also swear before the same court-martial as follows: "Where I was, I could not see, I could not see the place; I heard the gun fire, but I did not see the place"?—Yes, I said so, because I can't see when I stand in the kitchen.

586. When you were last examined at that same court-martial, did you undertake to swear at all that you saw any dead bodies at all on the Sunday morning?—I don't remember.

587. Did you swear before that same court-martial at all that you went down to the Holland Bay on the Sunday morning; not very far, and saw the three men tied, and they were dead?—I stated that I saw them dead and tied to the fence.

588. Did you not then only swear that on Sunday morning you stood in the shop and saw people digging the grave; was not that all?—I don't remember what I say before in camp; but I did go and see them before I saw the men dig the grave.

589. Could you hear the persons digging the graves the same Sunday morning from the post-office or shop?—No, I did not hear them; but I saw the persons digging (*and describes that she saw the raising of the hoes by lifting her hands up to her head and bringing them rapidly down again*).

590. Tell the Court exactly where you stood that Sunday morning when you say you saw persons digging the grave?—I was standing at the door nearest to the bridge.

591. Where were you when soldiers come; were you not in the back part of the kitchen, at the back of the shop, on Saturday?—I was in the kitchen, and I saw the soldiers coming, and I come round to the front of the shop.

592. Is not the kitchen at the back of the shop; at the back of that end of the shop which is towards Golden-grove?—Yes.

593. When Dr. Morris, as you say, drink the tea and went outside with Mr. Cullen, where did you go; did not you go into the kitchen and stop there?—I go to the kitchen and I stop in the kitchen till when I hear the gun fire I come out.

594. When did you leave Manning's service; were you not in his service when you gave your evidence before the court-martial at camp?—I was not in his service when I was before the Court in camp; I leave after Christmas, I think, but I do not recollect when.

595. Have you seen Manning anywhere since you gave your evidence at the court-martial up at camp?—I never see him until last Monday.

596. *By Prosecutor.*] Did this man you speak of, as having charged you with stealing, take anything from you belonging either to yourself or any other person?—He take nothing from me, but

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but he rob Mr. Manning's clothes in my presence in the shop.

597. Did you see those clothes anywhere when that man was not present, and what did you do?—I saw the clothes in the cart, and I took the bag out; the cart was the soldiers' cart going to Manchioneal on a Tuesday; and on Wednesday the man, a soldier, came and took me to Manchioneal, and say I had no business to take the bag, and say I take his 2 *l.*; but I did not take any money; when I got to Muirton, the soldier say he know I would not take his money, only I must show him the man, another soldier, I gave his clothes to when I take away Mr. Manning's clothes out of the bag.

598. And when you were taken before Ensign Cullen, what was proved as to the 2 *l.* which the man said he had and you took?—They have no proof; and Ensign Cullen, after he asked questions, told me to stand a one side; and they kept me for a time, and then tell me "Go," for I not take the money.

599. Can you, standing at the door of the kitchen, see anything or person coming from Amity Hall side towards the Post-office?—If you stand at the door of the kitchen you can't see anybody coming down from Amity Hall till they come upon the bridge.

600. Where did you see Manning last Monday; and did you have any conversation with him about this prosecution?—I saw him at his Post-office; but I have no conversation about this; he only ask if I going to town, and I say, "Yes."

601. *By Court.*] How near did you go to the three dead bodies, on the Sunday morning?—Near enough; about from where I sit to that wall (*about* 12 *paces*).

602. You said you heard guns fired; can you tell how many times you heard guns go off; and can you tell from the noise, how many guns were fired together; one or more together?—I do not remember how many times; I think there were about two together, and one after; they went off with a great noise.

603. Can you tell how long the soldiers had been at the Post-office before you gave Dr. Morris the tea, as you say?—I can't say.

604. Is the kitchen separate from the Post-office; and if so, how far from the Post-office; is it on the bank of the river?—It is separate from the Post-office; about as far as from here to the yard there; yes, it is aside of the river.

605. After the men were shot, when did you first go and see their dead bodies?—On the Sunday.

[The Witness withdraws.

Fifteenth Witness for Prosecution, recalled.

Samuel Bryan, is recalled by the Court; and questioned on his former oath.

S. Bryan.

606. *By Court.*] When you went back on Sunday morning, did you examine the wounds of the men; if you did, describe them to the Court?—I just ride my horse up to the fence and look at them; I see one of them particularly, with his brains hanging out, and the others all bloody over their clothes; I did not get off my horse; I did not see anything more; same as I say in Up Park Camp; but just turn my horse's head and walk off; I do not know which of the men had his brains running down; I did not see more than I have said.

[The Witness withdraws.

Eighteenth Witness for Prosecution.

Abraham George Donaldson, Servant to Mr. Manning at the Plantain Garden River Post-office, being duly sworn, is questioned by the Prosecutor.

A. G. Donaldson.

607. *By Prosecutor.*] Can you read and write?—Yes.

608. Where did you live during martial law, and what was your occupation at that time?—I was with Mr. Manning at that time as servant.

609. Do you remember soldiers coming to the Plantain Garden River Post-office; if so state?—Soldiers came 21st October 1865, from Manchioneal; they were black soldiers, and a few of them were white.

610. Do you know what officers came with these soldiers?—Ensign Cullen and Dr. Morris; I don't know if any other were officers.

611. Were any prisoners brought to the Post office on that same day, 21st October 1865?—Yes, four; one got away; three came to the Post-office.

612. What was done with the prisoners when they arrived at the Post-office?—Ensign Cullen order them to flog, and the soldiers apply to Mr. Manning for twine; in the meantime, they preparing the cat, Dr. Morris came out, order them to be shot.

613. Before the prisoners were ordered to be flogged, where were they, and how were they?—They were tied to the post of the shop door; the post of the piazza.

614. Do you know what soldier asked for twine, and was it given?—A black soldier; I do not know his name; the twine was given.

615. Where was Dr. Morris when the prisoners first came; did you see him outside?—He was lying on the table in the hall; I saw him outside.

616. When did he come outside?—When the prisoners came.

617. Did you see him and Mr. Cullen together at all?—Yes.

618. What was done with the prisoners after that?—The soldiers take the prisoners to the bamboo fence, and they tie there; the bamboo fence to the grass piece.

619. What grass piece do you mean, and how far is it from the Post-office?—The grass piece of Duckenfield; from the Post-office to the grass piece is about 80 yards.

620. Which part of the grass piece do you mean is 80 yards from the Post-office?—The part opposite the growing bamboos.

621. You say the soldiers took the prisoners down

down the road; who went with the soldiers down the road?—Dr. Morris; Ensign Cullen went but a part of the way.

622. Down what road did the soldiers take the prisoners; where does the road lead to?—To Holland Bay.

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It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, the 18th instant.

Seventh Day, 18th December 1866.

On Tuesday, 18th December 1866, at 10 a.m., the Court reassembles pursuant to Adjournment. Present, the same Members as yesterday; and proceeds with the Examination in Chief of Abraham George Donaldson.

623. *By Prosecutor.*] You have said that the prisoners were tied to a bamboo fence of the Duckenfield grass piece; how far is that bamboo fence from the Post-office?—About 80 yards.

624. Did you see anything done to the prisoners after they reached that bamboo fence; speak only of what you saw yourself?—They were shot by the soldiers.

625. Where were you when they were shot?—I was there, where the men were shot.

626. Did you go quite down to the bamboo fence?—Yes.

627. Who was present at the bamboo fence when the prisoners were shot?—Dr. Morris was there, and several of the soldiers.

628. Did you see Dr. Morris do anything?—I know that when a man was shot, Dr. Morris took a rifle and shot the man himself; the man was not quite dead; I saw Dr. Morris do this.

629. How many shots were fired, as far as you remember?—Four.

630. What became of the bodies of those three prisoners; speak only of what you saw yourself?—They were buried on the 22nd of October.

631. Did you go down to the place where they were buried, or do you know it from any other, and what circumstance?—I did not see them buried, as I was at the Post-office; but I went down and saw where they were buried.

632. Where did you go to and see the place where they were buried, and when did you go?—Go to the Dunkenfield grass piece; I went several days after.

633. Describe the part of the grass piece as near as you can where they were buried?—Very near enough to the fence where they were tied to.

634. Did you see any bodies dug up, and if so, say when, as near as you can remember?—Yes; I saw three bodies dug up September 1866.

635. Who was present when the bodies were dug up?—A Royal Engineer was there, and a doctor; and the men that buried them; if any more was there, I do not remember them.

636. Did you see anybody come to the Post-office on the Sunday morning?—Several volunteers passed by, and other men passed by.

637. Tell the names of the other men, or such of them as you know?—I know Zachariah Bailey, John Bright, David Thomas, and several others; I do not know their names.

638. Where were the bodies you saw dug up taken from?—From the same hole where they were buried.

639. What do you mean by saying the same hole where they were buried, when you did not see them buried; explain this?—I saw the grave in Duckenfield grass piece, and I saw the bodies taken out of this grave.

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640. *By Prisoner.*] Are you the same Abraham George Donaldson who was examined at Up Park Camp?—The very same.

641. Did you not swear before the court martial at Up Park Camp as follows: "I went part of the way, but not as near as Dr. Morris?"—Yes; I recollect saying that.

642. What then do you mean by swearing here to-day that you were at the bamboo rail when the men were shot as you say by soldiers; which statement is true; which is untrue?—I did not positively say that I went near to the bamboo fence.

643. You swore just now that you only stood at the Post-office on the Sunday morning, and not at the place where any persons were being buried; how do you know then of your own knowledge that the hole out of which some bones were taken in September 1866, was the same hole in which some bodies were buried in October 1865, which you did not see at the same time?—I went and saw the grave several days after; and it was out of this very same grave the bones were taken.

644. Show the Court how far you think the front door of the kitchen is from the back part of the shop?—It is about the length of this room.

645. Is there any other room at the kitchen but the room used for the kitchen?—There is another room besides the kitchen; under the one roof.

646. Is there any other room in the shop or Post-office, but that part in which the shop is kept and a little room at the end towards the Iron Bridge?—There is a dwelling apartment besides the shop; there is the shop, the bed-room, and the hall; three altogether.

647. Do you really mean that there are more than two separate and distinct rooms under that building in which Manning lives and keeps his shop, and the Post-office, excluding the shed?—I do not understand.

648. How long had you been living at this shop or Post-office up to martial law time, and since to this time?—About 10 months before martial law, and about 24 months since.

649. Suppose you are in the shop part of the building, and want to come out of it and go into the next part of the same building under the same roof, what do you enter immediately first; you are not asked at all about the shed?—You pass through the door under the same one roof.

650. As you pass through the door, what is the room called that you enter?—The hall.

651. Having

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651. Having left the shop part of the building, and entered the hall, can you go into any other separate and distinct room besides?—Leaving the hall, you can go into the bed-room.

652. Where was Dr. Morris when you first saw him that day under that building?—In the hall, lying on a table.

653. Did he go into the little room you call the bed-room; to the best of your knowledge?—If he went there I don't see him.

654. Where were you while you say, Dr. Morris was in the hall?—I was in the shop.

655. How long did you remain in the shop while Dr. Morris was in the hall; tell about the time?—I can't say how long; but I know I was there.

656. Did you remain in the shop the whole time that Dr. Morris was in the hall; and could you then see him all the time?—Where I was I could not see him all the time, but I went into the hall and saw him.

657. Has the room you call the hall any door opening on the shed out to the street, from that hall?—Yes.

658. Has the bed-room a door opening on the shed towards the street?—Yes.

659. You say, Dr. Morris was lying on the table in the hall; was his head tied?—I do not know if his head was tied.

660. Had he anything on his head when lying on the table; you say you went in the hall and saw him?—He was lying on a pillow on the table, but I don't know if he had anything bound on his head.

661. Who gave him the pillow, and where was it got from?—He must have got it from Mr. Manning, because I did not give it to him; he must have got it from the bed-room.

662. Did you bathe his head, or did anyone do so for him?—I did not; if anybody did so, I don't know.

663. How long did you remain in the hall with Dr. Morris, and why did you go there?—I did not go to attend him; I just went for something and then turn back.

664. You saw him lying on the pillow; was he asleep, or did he look sick or in pain; why was he lying on the pillow?—I do not know whether he was sleeping or not; I don't know if he look sick or not; I heard from the soldiers he was sick, but I don't know.

665. Do you not know that Florida water, or some lotion, was got for Dr. Morris out of the shop because he was sick?—Yes, it was Florida water; the soldiers say he was sick.

666. Did you not get the Florida water yourself out of the shop by Manning's order?—No; it was not me got it.

667. Did the soldiers say Dr. Morris was sick at the same time when they came in from Amity Hall, and at the same time as they came to the Post-office?—I don't know, but I heard it from the soldiers.

668. Did not Dr. Morris go into the hall and lie down as soon as he and all the soldiers came to the Post-office?—I don't know when he went there, as I was in the shop.

669. Did Dr. Morris go from the shop into the hall and then lie down; you were in the shop, you say?—If he go from the shop into the hall I don't remember.

670. Did you see him when he was going into the hall?—I don't remember seeing him going into the hall; but I know I saw him lying on the table.

671. Did you see when the soldiers first came in with the officers and doctor?—I saw the soldiers when they came in; I can't say whether the officer and doctor were with them; at that time I did not know the officer from the doctor.

672. You say you saw the soldiers when they come in; was it then that they told you that Dr. Morris was sick; you were in the shop?—It was not as they came into the door they say he was sick.

673. You say it was not as they came in they said he was sick; was it shortly afterwards, or about the same time, or a little after, or when, if you know anything about it; you were then in the shop, you know?—If they said so when they came into the shop I did not hear; but I know the soldiers say so, same day; but I don't recollect the time.

674. Had Dr. Morris gone to lie down before or after the Florida water was got, or the pillow was got; or before or after the soldiers told you he was sick?—He lie down first, before Florida water was given; I don't know what time the pillow was got; they don't tell me; but I heard the soldiers tell he was sick when he was lying down.

675. As soon as the white officers with the soldiers came up to the Post-office, did they come into the shop where you were; you were there?—They passed through the door into the hall.

676. You say they passed through the door into the hall; is that the door from the shop part of the building into the hall part of the building?—Yes.

677. About how long was it from the time when you saw the white officers go into the hall through the door you spoke of till the time you saw Dr. Morris come out of the hall and leave the pillow; state to the best of your belief; you have stated you were in the shop?—I do not understand the question at all; I was in the shop.

678. How long was it from the time when the white officers first come through the shop into that hall on their arrival at the shop till the time when Dr. Morris left the room?—I do not know how long.

679. At the court martial held at camp, re-referring to your evidence given to the Royal Commissioners, were you not asked, "Have you seen the graves since?" and did you not answer "No;" and before the court martial you said "Yes, I made that answer;" were you not asked that question, and did you give that answer before the Royal Commissioners and at Up Park Camp?—Perhaps I might; I do not remember.

680. *By Prosecutor.*] You have said they passed through the door into the hall; did the soldiers go into the hall, that is the common or private soldiers?—Yes, some soldiers went along with them too.

681. How many doors has the bed-room?—One door to go through the back yard and another to go through the hall; no other door.

682. You said you were living at Manning's about 10 months before martial law and 24 months since martial law, up till now; tell the Court when martial law was, and count up, loud enough for the Court to hear, how many months it is from that time to this?—Last October. (*Witness counts up from October of one year to December*

December of the following year, making 15 months.)

683. What was last October; you were asked to tell the Court when martial law was; do so?—Last October was 1865; martial law was last October 1865.

684. *By Court.*] Can you tell about what time in the morning of the 22nd, Sunday, did the volunteers pass by, and about what time did the other men you mention pass by?—Volunteers passed early, about after seven in the morning; the other men pass long after volunteers pass; long after seven; I do not know the hour, nor how long after.

685. You say you were down at the bamboo rail when the men were shot; describe minutely how they were tied and shot; who gave the order to the soldiers to fire?—Who gave the order I don't know, or if any order was given I don't hear; their backs were tied to the fence and the faces opposite the soldiers; they were all tied to the fence same time, before any one was shot; four times they fired, one gun at a time.

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686. After Dr. Morris took the rifle from another man, as you have stated, what did you see him first do with it?—When he took the rifle from the other man he discharge it upon the prisoner.

687. You have said that there were four shots fired at the prisoners, and that Dr. Morris fired one; which was it that he fired?—The fourth.

688. How many days after the Sunday was it when you visited the grave, and what did it look like?—I can't say how many days, but I know I went; it look like a grave, a new hole, a kind of place where men buried.

689. Can you tell how long after the soldiers arrived at the Post-office, on the Saturday, were the three prisoners brought there?—I can't say what hour of the day; I can't say how long after the soldiers came in.

[The Witness withdraws.

Nineteenth Witness for Prosecution.

THOMAS CLARKE, Labourer, residing at Holland Bay, being duly sworn, is questioned by the Prosecutor.

690. *By Prosecutor.*] Do you remember the time of the martial law?—Yes.

691. Did you go to the Iron Bridge during the martial law time?—Yes.

692. What did you see when you were there?—I went there a Saturday day, and three prisoner come; the soldiers take them and tie to the post by Mr. Manning's shop, and they were going to shot them, and Mr. Manning order them off, not to shot there, and then when they loose them one of the white soldiers carry them to the logwood corner; and after they carry them I stand up in the road, and they (the soldiers) shoot them in the logwood corner (Richard McCall); and after they tie them they shot them; I do not know the names of the other two that them shot; they were black men.

693. Do you know the name of the white soldier you speak of?—No.

694. Is there any kind of fence at the place you call the logwood corner?—Yes; there is a bamboo fence.

695. Do you know the names of any of the soldiers you saw that day at that place?—No more than Corporal Hunter.

696. How did you know Corporal Hunter?—He belongs to Holland.

697. Did you ever see him at Holland before the day you see him at the Iron Bridge?—No, I never saw him at Holland before.

698. Did you see anybody do anything to any of the prisoners when they were tied to the post at Mr. Manning's shop?—No.

699. When the prisoners went down to the logwood corner, what did you see done to them?—I stand up in the road; and after they tie them, the soldiers fall out on the road, and shoot them; they shoot them all together, because the guns go off together.

700. Did they tie them all one time; all the same time, or how did they tie them?—They carry the three of them together, and tie them up.

701. Did you know the name of any of the people who brought the prisoners to the Iron Bridge?—Yes; I know Colson and Bryan.

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702. Did you see any officers with the soldiers; if so, tell the names?—I see two white buckras, but I don't know officer from soldier. I don't know their names.

703. Did you hear what the soldiers called them, or any of them?—No.

704. Did you go to Golden Grove that day; if so, what for?—I went there to carry soup for one of the buckras.

705. Who sent you; and what buckra was the soup for?—Mr. Manning sent me; but I don't know which one I carry soup for.

706. When you came back from Golden Grove, where did you go to that same day; what road did you walk?—I go to Holland Bay. I walk same road where the men were shot.

707. What did you see when you were going back to Holland Bay, after you passed the shop?—I see the three dead bodies on the bamboo fence.

708. *By Prisoner.*] Are you the same witness who gave evidence at Up Park Camp before the court martial?—Yes.

709. Did you then swear as follows: "When they carried them to bamboo corner, I did not see full what they do with them from where I stood on the road?"—Yes.

710. Did you not then also swear when they carried them to the logwood corner, "I did not see what the soldiers were doing; they had them at the bamboo?"—Yes.

711. Did you also swear then, "I cannot tell the year or month when this happen; I really cannot well say if it was before last Christmas?"—Yes.

712. Did you, when you were examined at camp, swear to the name of Bryan or Colson at all; think well before you answer?—Yes, I did.

713. Were you examined as a witness on oath at Up Park Camp, or at these barracks, when you gave your evidence before a court martial about these matters?—It was here I kiss the book.

714. Did you, when you kissed the book and took your oath in these barracks, before these same

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same gentlemen, mention the name of Corporal Hunter at all?—No; I did not mention Corporal Hunter's name.

715. Did you mention the names of Bryan or Colson at all, when you kissed the book before these gentlemen, in these barracks in this room, and before you gave your evidence to-day?—Yes; I mentioned their names.

716. About what time of that same day, did you go to Golden Grove with soup, and how long did you stay there?—I do not know what time. I did not stop; when I gave the soup, I turned right back.

717. Have you just now, before you came up here, been down with Manning, Anderson and other persons, witnesses, at the bottom of the steps down below in these barracks?—Yes; Manning, and Anderson, and Eliza Phillips were there. I forget the names of the rest.

[The Witness withdraws.

Twentieth Witness for Prosecution.

Alfred Brooks, Planter in St. Thomas-in-the East, being duly sworn, is questioned by the Prosecutor.

A. Brooks.

718. *By Prosecutor.*] Did you do duty as a volunteer during martial law; if so, state in what parish, and in whose troop?—I did duty as a volunteer in Mr. Ford's Irregular Troop; in St. Thomas-in-the-East.

719. Do you remember going from Morant Bay to Golden Grove Estate on duty as a volunteer; if so, state when, and the persons by whom you were accompanied?—Yes, I went from Morant Bay to Golden Grove. I joined Mr. Ford's troop at Morant Bay on 20th October, and marched on the 21st; there were 30 in number of Ford's Irregular Troop; 29 besides myself

720. Were you accompanied by other force or troops?—I was accompanied by Captain Astwood's troop, and about 20 of the 6th Royals, under Lieutenant Adcock.

721. At what hour of the day, as near as you can remember, did the detachment of which you were one, that is regular soldiers, volunteers, &c., arrive at Golden Grove?—About 2 p.m.

722. Did you go anywhere on duty the next day; if so, state to what place?—I went on duty to Holland Bay for a special constable to arrest prisoners at Holland Estate, rebels; on the morning of the 22nd October, on a Sunday.

723. Where did you go from; and at what hour, as near as you can guess, did you start?—From Golden Grove Estate, between 7 and 8 o'clock a.m.

724. Did anybody leave Golden Grove that morning, and who and when; that is, was it before or after you left?—Part of the 6th Royals, Captain Astwood's troop and a few of Ford's Irregulars, left that morning before I left.

725. Did you on your way to Holland Bay observe anything in the road?—Yes, I did. I saw three men tied to the bamboo fence round Duckenfield grass piece, about thirty yards from Manning's shop; they were dead, apparently dead. I made close observations, and found that one of the men on the left side of the head, the brains were protruding from it, and the second man to him had a leathern belt round his waist. I did not see where the other two men besides the one that had the wound in his head, were wounded; they were covered all over with blood; I noticed three or four fowls picking up something by the side of them; but can't say what it was.

726. Did you know the name of any of these men?—I knew one of them, because he often laboured at Amity Hall Estate when I was there; his name was Richard Walton, the tallest of the three men.

727. Were these three men dead or alive when you saw them that morning going to Holland Bay?—They were dead.

728. Did you go on to Holland Bay, and did you get the constable there; state his name, and state where you next went to?—I did go to Holland Bay, and got the constable there, Robert Speed, and from there took him with a prisoner to Holland Estate, and there arrested about 30 prisoners.

729. Did you get the aid of any other constables; if so, state the names of such as you remember?—I pressed two other constables in the Queen's name, Thomas Brown and Bevis Hunter; there were two other constables on Holland Estate, but they had gone in search of rebels, and I was obliged to press these two men aforesaid.

730. When you got the prisoners at Holland Estate, where did you go to?—I marched them on the north side of the river, from Holland Estate to the Iron Bridge, and from there I took them to the Holland Bay-road, and showed the prisoners the three men that were tied dead to the fence, and told some of the prisoners that that would be some of their fates. And after they had taken a view of these bodies, I returned with them on the road to Golden Grove, and when they got to Mr. Manning's shop, they begged for a drink of water, but I would not allow them to halt; but after examining them, I really found they were faint and thirsty, or at the sight of the bodies, I don't know which; and I ordered the constables, the three aforenamed constables, to get them some water from Manning's shop, as I saw they were really in want of it.

731. Where did you take the prisoners to, and to whom did you deliver them?—I took them to Golden Grove Estate head quarters, and I delivered them to the Commanding Officer, Lieutenant Adcock, and Mr. Ford.

732. About what time of day do you think you passed the Iron Bridge on your return with the prisoners?—About 10 a.m.

733. Did you know before you left Golden Grove that morning, the route that the party which left before you were to take?—Yes; I was told they were going through Amity Hall Estate to Wheelerfield, and from there to Plantain Garden River, and back to Golden Grove.

734. In whose employment were you at the time you have been speaking of, and in what capacity?—In Mr. Shortridge's employment, Golden Grove Estate, as field book-keeper.

735. Do you know the parish and county in which all you have stated happened?—In the parish

parish of St. Thomas-in-the-East; I really cannot say the county.

736. You have not said what year all this occurred in, will you do so?—In 1865.

737. Did you pass that way any time after, that is, the bamboo fence you have spoken of?—Yes, I passed there on Tuesday, 24th of October 1865.

738. Did you see the bodies there then?—No, I did not see them.

739. Did you make any observations; if so, state what?—I did not see the three men on the Tuesday when I was passing to Holland Bay, but on the right-hand side of the road going down Holland Bay, in the Duckenfield Grass-piece, near the road, I saw some fresh earth turned up, just about three or four yards from where they were tied when dead.

740. *By Prisoner.*] Is this the first time you have given evidence on oath about these matters?—Yes, this is the first time.

741. You state that you were at Amity Hall, were you there as a bookkeeper. Why did you leave, and give the date of your leaving; you also stated that you were field bookkeeper at Golden Grove Estate. Why did you leave; and give the date of your leaving?—I was at Amity Hall as book-keeper; I left because I was pleased to leave. I left on 21st September 1865. I left Golden Grove Estate because I was sick; I cannot really say the date, but it was in October 1865. *A. Brooks.* 18 Dec. 1866.

742. At what date did you become bookkeeper at Golden Grove?—On 1st October 1865.

743. Have you seen Manning or Anderson lately?—I have seen Manning yesterday going across Water-lane, but not to speak to. I saw Anderson to-day, coming from East Queen-street, as I was going along there. We had no conversation whatever.

744. Have you been reading the newspapers lately, any time during the last three months?—I am a subcriber to the "Colonial Standard." I have read it during the last three months.

745. When you returned to Golden Grove on the Sunday, about what hour was it; and how long did you remain there that day?—I got to Golden Grove with the prisoners and constables about 10.15. a.m. I remained there that day.

746. Who sent you, and in whose presence were you sent from Golden Grove, to arrest prisoners, specially?—I did not say specially. Mr. Ford sent me. I cannot say who else was present, as there were a good many standing about.

It being now 4 p.m., the Court adjourns till 10 a.m. To-morrow, the 19th instant.

Eighth Day, 19th December 1866.

On Wednesday the 19th December 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment:—Present, the same Members as yesterday.

The prisoner, Staff Assistant Surgeon Morris, is absent, and the Deputy Judge Advocate hands in a "Return of officers on the sick Report," received in court immediately before 10 a.m., purporting to be signed by the officer commanding 3rd West India Regiment, to which corps Assistant Surgeon Morris is attached, and by which return it appears that he has been this day placed on the sick list on account of fever. The Deputy Judge Advocate calls attention to the fact that this return is not the medical certificate required on such an occasion, and does not state that danger might arise from the prisoner's attendance in court, as is usually required. 19 Dec. 1866.

This report is marked E., signed by the President, and attached to the Proceedings.

The Court therefore adjourns till further notice from the President, and the circumstance is reported to the Major General Commanding.

Ninth Day, 24th December 1866.

On Monday, the 24th December 1866, at 9 a.m., the Court re-assembles pursuant to the President's order:—Present, the whole of the Members; owing to the absence of the Prisoner, the Proceedings were delayed till 9.25 a.m.

With reference to the adjournment of the Court on the 19th instant, the Deputy Judge Advocate hands in two documents, received on the 19th instant, after the Court had adjourned, one a medical certificate respecting the inability of Staff Assistant Surgeon Morris to attend on the 19th instant owing to his suffering from fever, and the other a report that in the opinion of Staff Surgeon Dunlop, the prisoner would not be able to attend the court before the 24th instant.

These documents are read in court, marked respectively F. and G., signed as usual, and attached to the proceedings.

The Cross-examination of Alfred Brooks is then proceeded with.

747. *By Prisoner.*] Are you aware that Captain Adcock and Mr. Ford are not now in the island?—I am aware that Mr. Ford is not in the island, but I know nothing about where Captain Adcock may be. *A. Brooks.* 24 Dec. 1866.

748. Whereabouts on Holland Estate did you capture the prisoners you say you took on the Sunday morning; were they all together?—They were all together in the negro houses on Holland Estate.

749. Were

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749. Were these negro houses scattered about; give an idea of the distance of these houses from each other, and from the main road?—They are not scattered about, they are all together. I cannot exactly say how far from the main road.

750. How many negro houses were there, do you think, to which you went?—I do not remember now.

751. How many persons at most did you take as prisoners in any one house; surely you can give some idea; is your memory so bad?—Some of the houses were occupied by two or three; as to my memory it is not very bad.

752. Can you give the names of the prisoners you took to Golden Grove?—I can give part, but not the whole of the names. Those I know are William Hall, James Theodore, James Bell, Allen Rose, Frank Cox, Samuel Walker, James Francis, and Richard Roden; those are all I know.

753. Did you see Mr. Sinclair at Golden Grove on the Sunday morning, or Mr. Chisholm about the time you say you took prisoners to Golden Grove?—I do not remember seeing them there, but I saw them the day before.

754. On your arrival at Golden Grove on the Sunday morning, what did you do with the prisoners as soon as you got there; and what afterwards became of you on that same day?—After taking the prisoners to Golden Grove, I delivered them to the commanding officer, and after that there were some of the 6th Royals going out foraging, and I went with them.

755. By the commanding officer, whom do you mean?—Lieutenant Adcock.

756. Do you know Mr. Lascelles; is he not your brother-in-law?—He is.

757. Did you ever tell this story to him before you were subpœned for this court; if so, when first did you do so?—I had no reason for telling him.

758. Have you not often seen him or communicated with him during or since martial law?—I have often seen and communicated with him after martial law.

759. Is not your sister, the wife of Mr. Lascelles, your nearest relative alive?—I have other sisters besides Mrs. Lascelles.

760. Are not your mother and father dead, and have you any brother in this island?—My mother and father are both dead; I have two brothers, but they are not in the island.

761. Who else was present besides the commanding officer, Lieutenant Adcock, when you say you delivered those prisoners at Golden Grove; try and recollect yourself; officers, or volunteers, or overseers, or book-keepers are intended?—I saw Mr. Ford, and Lieutenant Adcock, and a few of the volunteers (Ford's Irregulars, I mean); they were then catting prisoners; I was in a hurry to get along with the soldiers going foraging, and I did not take notice of any other person.

762. Were not the whole of Ford's Irregulars planters in St. Thomas-in-the-East, or nearly the whole of them?—Nearly the whole of them.

763. And cannot you now tell some of the names of these planters?—If I were to give their names they would object to being subpœned on account of their overseers not allowing them to leave their work, they being book-keepers: Frank M'Dermott, John Mais, David Ford, Michael Myers, Robert John Stewart, and John Lowe are all I can give.

764. In what parish are all these persons whose names you have just mentioned now resident?—In St. Thomas-in-the-East, to the best of my knowledge.

765. With what soldiers and officers did you go foraging; give such names as you can recollect?—I did not go along with any officers, only with soldiers. I do not know their names, but I saw two of them on Saturday last.

766. Are any of those planters' book-keepers now on Hordley, Amity Hall, Duckenfield, or Golden Grove; were any of them such at the time you say you delivered prisoners?—Some of them were then Golden Grove and Plantain Garden River book-keepers; there are some of them on Golden Grove now; I do not know about the other places.

767. Which of them was there, or is now a book-keeper on any estate, and on which estate (just mentioned in the former question); state the name and the estate?—John Lowe is now a book-keeper at Golden Grove Estate; Frank M'Dermott is one at Plantain Garden River Estate.

768. Have you or not been boasting in Kingston that it is better to be a witness for the prosecution, because you get a guinea a day whichever way the case goes?—No, I have not; I have never been doing so.

769. *By Prosecutor.*] You have said that Frank M'Dermott, John Mais, David Ford, Michael Myers, Robert J. Stewart, and John Lowe were of Ford's Irregulars; were they present when you delivered the prisoners to Lieutenant Adcock and Captain Ford, and did they see you do so?—They were present, but I cannot say whether they saw me or not, or whether they may have chosen not to see me.

770. Were you, when in St. Thomas-in-the-East, in the habit of visiting Mr. Manning or Mr. Anderson as a friend and companion, or in any respect at all?—No, I have never been. I have never seen Anderson until martial law.

771. You have given in the names of some of the prisoners you took up on the morning of the 22nd October 1865; can you tell where they are now?—I believe three of those whose names I gave were either hanged or shot, I do not know which; I think nearly the whole of the others will be found at Holland Estate.

772. *By Court.*] Did you report the fact of your having seen these three dead bodies to any one on your return to Golden Grove on Sunday 22nd October 1865; if so, to whom; if not, why not?—I did not report it; I thought they were prisoners who had been taken up, tried, and executed.

773. Did you observe how these men were tied to the bamboo rail?—They were standing, with their hands tied aback of them, and their heads dropping on their breasts.

774. You have stated that the brains of one of the men protruded from the left side of his head; can you tell which of the three that was?—That was Walton, the one I knew; the tallest of the three.

775. Did you notice if there was or was not any unpleasant smell from these bodies, or whether there were signs of decomposition beginning?—There was no smell.

776. About what hour on Sunday 22nd October 1865 did you deliver the 30 prisoners to Lieutenant Adcock and Mr. Henry Ford?—About 10. 15., a. m.

777. You have stated that a part of the 6th Royals, Captain Astwood's troop, and a few of Ford's Irregulars, left Golden Grove on Sunday morning

morning before you; do you know who was in command of the party?—No; I really cannot say.

778. Do you know at what time this party returned to Golden Grove?—I was not in Golden Grove, as I did not return till after they came in; they returned before I brought in the 30 prisoners.

779. You have said that you passed the Iron Bridge on Sunday, with prisoners, about 10 a. m.; did you see any persons standing about or on the roads near at that time?—No, I did not see any one. *A. Brooks.* 24 Dec. 1866.

780. Do you know if any notice or information as to your going to Golden Grove was sent on to Golden Grove before or during your march from Morant Bay, on Saturday 21st October 1865?—No; I do not know.

[The Witness withdraws.

Twenty-first Witness for Prosecution.

JOHN DUANEY, Second Lighthouse Keeper at Morant Point, being duly sworn, is questioned by the Prosecutor.

781. *By Prosecutor.*] DID you go from the lighthouse in the direction of Golden Grove, at any time during martial law; if you did, state when and where you went?—On 21st Saturday, October 1865, I went from the lighthouse to Golden Grove. *J. Duaney.*

782. Did you stop anywhere before you got to Golden Grove?—Yes, I call at the Post-office, at the Iron Bridge.

783. What did you see while you were at the Post-office at the Iron Bridge; tell the Court all you saw?—When I ride up, I saw Ensign Cullen sitting at Mr. Manning's door, and Doctor Morris lying down inside, and several soldiers under the shed; as I ride up, two soldiers came up to take away my horse; Ensign Cullen ordered them off; I alight and hitched my horse, and went into the shop; some time after I hear the alarm given by the soldiers, "Prisoner get away." Some soldiers went up, and some went down the road to see, but they did not overtake the one who got away. The soldiers met the three men, prisoners, and turned back to the shop with them; one of the prisoners' names was Richard Walton; I do not know the names of the others. Ensign Cullen went out and meet them in the road, and I look out, and as I know this one, Walton, I ask Ensign Cullen what these people do, and he said, taking a few nails, and I point to the man, Walton, and said, I am very sorry this man is into it, for he is very useful to us at the Lighthouse when we get an express message, he never refuse going; and I ask Ensign Cullen what he intend doing with them; and he said he would flog them; I said, very well, they deserve it, for they have no right to interfere with what do not belong to them. Ensign Cullen went into the shop, and I went with him, and he asked Mr. Manning for twine to make a cat, and the twine was given him, and Ensign Cullen went out and Dr. Morris went also. While the cat was preparing, black soldiers making the cat, the two of them, Dr. Morris and Ensign Cullen went talking, and a little while after the soldiers threw away the cat; Hunter was one, and loosed the prisoners, and while Hunter was loosing the prisoners, he say, "You had best say your prayers at once, for you soon out of this." The man commenced to say something, and he hit him in the mouth, and say, "Shut your mouth, you ought to say your prayers since last night." I saw several black soldiers taking up their rifles, and one say, "Give me a chance," and another say, "Give me a chance;" after they loose the prisoners, the soldiers and the prisoners went down the road, and Ensign Cullen and Dr. Morris went too from the shop, but how far they went I don't know; I wanted to see if I could get Walton off; but I was persuaded not to do so, and I kept in the shop, and I see through a glass window down the road, where they stop, and they take the three men across the road and tie them to the fence; and after I hear two vollies fire; I thought they shoot the three men at once; I looked out and saw one man against the fence; and as I look I heard a gun go off, and the man drop, and as I draw in I heard another volley; and I look through the glass window, and I saw Dr. Morris turn round and hand a gun to a soldier; then all the soldiers turned back to the shop, and this man, Hunter, wiping the nipple of his gun, and saying, "that the gun was long dirty, and he wished it to be clean," and "that he has just eaten his breakfast now;" and Ensign Cullen and Dr. Morris came up also, and I went down the steps and meet them up; and the doctor ask me for a bit of soap to have a bathe, and I gave him the soap and a towel, which I got from Mr. Manning, and he and Ensign Cullen went to the river, and I went off to Golden Grove, and I saw a few black soldiers at Mr. Kirkland's shop at Golden Grove; part of the same company that was at the Iron Bridge.

784. Did you know any of the people who brought the prisoners to the Post Office; if so, name them?—One named Bryan, bookkeeper at Duckenfield, and two constables; I don't know their names well.

785. You have said the prisoners were tied to a fence, what sort of fence is it?—A bamboo rail, attached to the logwood hedge; they use it as a gate, and sometimes they tie it up as a fence.

786. You have said you heard two volleys, and then you looked out and heard a shot, and then you saw a man drop; did you see the whole of that man's body?—No; I see the head of the man standing.

787. Was that before he was shot?—Yes; I look out, and see the man standing against the fence; and I hear the gun, and the man drop.

788. Was there any attempt, as far as you saw, to shoot the prisoners without taking them down the road?—They did not attempt to shoot them before they take them down the road; but Mr. Manning hear they going to shoot them, and he came round and say, "Take them away, take them away."

789. You say you saw a few black soldiers at Mr. Kirkland's shop at Golden Grove, when you arrived there; can you tell how many, and do you know what they went there for?—Either three or four men; I saw them buying rum in the shop.

790. Are you quite certain that you saw Corporal Hunter return from down the road to the Post

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Post Office, after the three men were shot?—Yes; I did see him; I know the man well, he belongs to that parish; he belonged to Holland Estate; his parents live there now, and his brother work there sometimes.

791. Do you know Dr. Morris, that is to say, will you know him now if you see him; if so, look, and if he is in this room point him out?—Yes, I know him. (*Witness identifies Assistant Surgeon Morris.*)

792. *By Prisoner.*] Are you the same witness who was examined before the last Court Martial at Up Park Camp?—I was not examined up there; I was examined here in these barracks.

793. Have you and many of the other witnesses for the prosecution been together down in these barracks, and in Kingston, before you gave your evidence to-day?—I meet them sometimes here, but I come up seldom, because I knew I would not be required.

794. Who were outside the shop with you when you say you heard the report of guns?—Well, I cannot say; for when the order was given to shoot the men, there was a great stir, and I do not know who went out or who stayed in.

795. Just before you heard the first report of the guns, who were inside the shop with you?—I cannot say, for I was looking down the road through the window, and my back was to the shop, and I did not notice.

796. Did you not swear before the Royal Commissioners, in Spanish Town, that just before, or at the time of the report of the guns, that you, Manning and his boy, and Anderson, were in the shop?—I do not recollect that I did say that positive just before the guns fire. Before the guns fire, I do not recollect who were in the shop.

797. Do you recollect your being asked, when you were last examined about this same matter, as to Manning and his boy, and Anderson, being present in the shop with you at the same time, and the answer you then gave?—If they did ask me, I do not recollect; I think I do recollect they ask me that question, and I answer, I do not recollect where they were.

798. Were you asked before the Royal Commissioners at Spanish Town, and also on your former examination before the Court Martial, as to what you stated at Spanish Town, "Who was in the room when you were looking out of this window"; did you answer "There were several there, Manning and his boy, and Anderson"?—I do not recollect; it is such a long time. I do not recollect the words I say then.

799. About what time in the day were these prisoners brought to the Post-office?—I think it was about 10.30 or 11 or 11.30 a.m.; but it was not mid-day. But I did not look at the hour.

800. Will you swear that from where you were standing in the shop you could see the prisoners being tied at the fence?—I could not see the rope, but I saw them against the fence; I expect they tied them.

801. About how long were the prisoners at the Post Office before you heard the report of guns?—About a quarter of an hour altogether.

802. About what time on that day did you leave the lighthouse; what time did you arrive at the Post Office; and how far is the lighthouse from the Post Office?—I must have leave the lighthouse about 6.30 a.m. It must have been about 9 a.m. when I arrive at the Post Office. It is about six or seven miles from the Lighthouse to the Post Office.

803. Is it true, then, that you arrived or had alighted from your horse at the Post Office about the same time as the prisoners were brought to the Post Office?—No; I was there some time before they come.

804. How many vollies did you hear, when the guns went off?—I hear two first, about three or four guns go off, not together, but quick, one after the other, and the last man was fired at twice; as I look at the man, one single rifle went off and the man drop, and then I hear one more rifle. That was the time I drew into the shop; it was the last rifle. I was in the act of drawing in when this last rifle go off.

At 1 p.m. the Court adjourns over Christmas-day, till 11 a.m., 26th instant.

Tenth Day, 26th December 1866.

On Wednesday, 26th December 1866, at 11 a.m., the Court re-assembles, pursuant to Adjournment:—Present, the same Members as on 24th instant; and proceeds with the Cross-examination of John Duaney.

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805. *By Prisoner.*] About how many men, soldiers, did you see go down the road, as you say, with the prisoners?—Several went down, but I can't say the number; I did not count them.

806. Tell about the number; is your memory so bad that you have no idea at all of the number; were there as many as are in this room?—I do not think so many as are in this room, but I can't say the quantity.

807. How many guns altogether do you think were fired?—I can't be positive; but the first two vollies four or five guns go off, but I can't say exactly the number, as they go quick off after one another.

808. Do you understand what a volley is; give the Court your idea?—If three or four guns fire at a time, that is a volley; or if one gun go I count it a volley too.

809. When you were at the Post Office (or Manning's shop), did you take any refreshment?—No; I did not.

810. Are you sure that you were quite sober all the time you were at Manning's shop on that day you speak of?—Yes, I was; and always sober. I am not given to drink.

811. *By Prosecutor.*] You have said you left the Lighthouse at about half-past 6 o'clock, and got to the Post Office at about 9 o'clock, and that the distance is about six miles; what made you take so long to go from the one place to the other?—I ride easy, and I stop at Holland Bay on my way for a little.

812. *By Court.*] Did you see those few black soldiers

soldiers you have spoken of as being at Kirkland's shop leave the Post-office before the remainder of the detachment, and was anybody in charge of them?—I did not see them leave the Post-office. I did not notice if there was any serjeant or corporal with them. I did not know any of the men. *J. Duany.*

813. At what time did you arrive at Golden Grove on that day?—I cannot say, for I did not notice what time of day it was. 26 Dec. 1866.

[The Witness withdraws.

Twenty-second Witness for the Prosecution.

JOHN ANDERSON, Schoolmaster, at Amity Hall, being duly sworn, is questioned by the Prosecutor.

814. *By Prosecutor.*] WHERE did you live during martial law, and in what year was martial law proclaimed?—I was living at Amity Hall. Martial law was proclaimed in 1865. *J. Anderson.*

815. Did you, at any time during martial law, leave Amity Hall and go elsewhere; if so, state where to?—I did leave Amity Hall, and went to the Iron Bridge, to the Post-office.

816. While at the Post-office, did you see anything particular happen; if so, state what, and when?—On the 21st October I saw black soldiers come to the Iron Bridge, in command of Ensign Cullen and Dr. Morris. Dr. Morris complained of fatigue, and he went and lay down for some time on a table, which was the only convenient place we had at the time, I mean in the premises, Mr. Manning's place; a little after, he got up and refreshed himself, and sat down for some time, and said he wanted chicken broth. All this happened before mid-day.

817. When you left Amity Hall and went to the Post-office, what did you go for?—Letters, for my letters; while I was there, I heard of the breaking out at Morant Bay, and I remained there.

818. Did you see any prisoners brought to the Iron Bridge on that day?—I did see three prisoners arrive at the bridge.

819. Tell their names, if you know them, and the names of those who brought them?—Richard Walton, Tommy Miles, and John McCall; Richard Francis got away on the barricade. I heard the soldiers say, "Prisoner got away," and they catch up their rifles and run different ways for him. The men who brought the prisoners were Bryan, Colson, and old Wills.

820. What was done with the prisoners when they arrived at the Post-office?—The constables delivered them to Corporal Hunter, and they were ordered to be flogged. I heard that order through Hunter. Hunter made application for twine; while he was about to make the cat, the order to flog them was reversed to shoot them.

821. Where were the prisoners all this time?—They were taken from the middle of the road, where they were delivered over by the constables, and tied to a post, one of the columns to keep up the shed of the Post Office.

822. Did you see Dr. Morris, and if so, where at this time?—Dr. Morris, who was in the adjacent room when the cat was making, went out into the road to Ensign Cullen, and looked at the paper which Ensign Cullen had in his hand; it was then the order was reversed from flogging to shooting.

823. What did you see done after the order was reversed from flogging to shooting?—The men, who were tied to the post, were jeered at, loosed from the post, and led down by the soldiers below the blacksmith's shop, towards Holland Bay side. Dr. Morris marched down with the men. They were tied to Duckenfield bamboo rail fence, one after the other, and there shot by the soldiers. Dr. Morris himself handled a rifle in shooting, for I saw when he present it, heard the report, but could not see when the ball enter the prisoner.

824. You say, "shot by the soldiers;" did you see the shooting? Explain fully what you saw—where the soldiers were, where the prisoners were, and how much of the prisoners you could see?—I did see the shooting. The soldiers were opposite to the prisoners, with their backs to the river, by the bamboo range, which grows by the side of the river. The prisoners were tied to Duckenfield rail, with their backs towards the grass-piece, and their faces to the road. When the prisoners were first taken to this bamboo rail I saw their heads from where I was standing, in the middle of the road, opposite the Post-office box.

825. How many soldiers do you think went down with the prisoners?—I did not count them, but I should think about 14.

826. How many shots were fired; state as near as you remember?—With regard to the number of muskets that go off I cannot venture to swear, but they were three intervals of shooting.

827. You say Dr. Morris laid on a table; where was this table?—In the adjacent room to the Post-office and shop.

828. After the prisoners were shot, what became of Dr. Morris?—He came up to the shop, and got soap and a towel to bathe. While Dr. Morris and Ensign Cullen went to bathe I went to look at the dead bodies.

829. What did you see when you went to look at the dead bodies?—I saw the three men tied with their hands to the fence; one had his brains fearfully over his face—come out of his skull.

830. You have said you saw "the three men;" what three men?—Richard Walton, Tommy Miles, and John McCall; they were perfectly dead when I went and looked at them, while the officers went to bathe.

831. Do you know Dr. Morris; if so, stand up and point him out if he is in this room?—

Witness identifies Assistant Surgeon Morris.

832. What time of day were the prisoners brought in; tell us as near as you can?—I should think it was between 11 and 12 o'clock, though I have no time-piece; it was about mid-day.

833. *By Prisoner.*] Have you been with the other witnesses for the prosecution, from day to day, near the bottom of the steps outside this room, and also in Kingston, since you were last examined, reading the newspapers, or otherwise?—I have been with the other witnesses outside this room; when I get the newspapers I read them, but not regularly.

834. Are you the same person who swore before the last court martial, at camp, these words, or to the following effect: "I remember what I have stated to the Court now better than 12 months ago, because I prayed to the Lord, and He assisted my memory, as if it happened yesterday"?—I am the same man.

835. Are you the same man who stayed from the

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the 12th October, at the Post-office, until the 22nd October, when you were taken to Golden Grove and flogged as a rebel, in 1865, during martial law?—I am the same man, but I never was flogged as a rebel; I deny that.

836. What were you flogged for, then, during martial law at Golden Grove; was it not because you were complained of and charged as a rebel?—The charge that was made against me was, that I had said, August 12, 1865, that Mr. Chisholm was paying 3 *d.*, 6 *d.*, 9 *d.*, and 1 *s.* per week at Golden Grove. When I denied that, Mr. Harrison of Hordley whispered to Lieutenant Adcock, and then I was ordered 50 lashes; although, to this hour, I do not know what the charge against me was; I was tied to the same step up which I had taken Mr. Creighton, with not a soul to help me, and he was that wounded he could not walk.

837. Did you swear, before the last court martial, at camp, to the effect that you were present at both meetings, at the Guineppe tree at Morant Bay and at Stokes Hall, and the general character of both meetings were alike; on the state of the island at the time? Were you flogged after those meetings were held in which you took part?—Yes, I did swear that at the last court martial; I was flogged during martial law, 22nd October 1865, Sunday morning, same day as the schoolhouse was burnt by the volunteers, the schoolhouse I am teaching in.

838. Will you swear that you were flogged on the Sunday morning? Did you not swear, before the last court martial, at camp, as follows, or to this effect: "In the morning I was tied to the staircase, in the evening I got 50 lashes"?—I cannot swear I was flogged Sunday morning, because I was flogged Sunday evening. The school house was burnt Sunday morning.

839. Were you not brought before the court martial, of which Staff Assistant Surgeon Morris was a member, at Golden Grove, before you were flogged that Sunday?—I was not brought before a court, not for a minute. When I was brought out, Lieutenant Adcock ask what witnesses were against me. Mr. Chisholm then run up and say what I have told you; and then Mr. Harrison whispered to Lieutenant Adcock; that was all.

840. Did not the volunteers return in the evening of that Sunday, and were you not flogged after they and Lieutenant Adcock returned?—After they returned and eat their dinner I was flogged; where I sat I could hear them; they returned in the evening.

841. About what hour in the evening of the Sunday did the volunteers, with Lieutenant Adcock, return to Golden Grove, and how long afterwards, and after dinner was it, that you were flogged at Golden Grove that Sunday evening?—Where I sat I could not hear the dial, but I think it was after 4 p.m.; after I was flogged and went past the church it was dark; the sun was down, but I do not know how long this was after they had had their dinner.

842. Did you not swear at camp, before the last court martial, to the following effect, or in these words: "I did warn Manning to fly for his life when I received 50 lashes at Golden Grove"?—Yes, so I did.

843. Did you not swear at the last court martial at camp, to the following effect, or in these words: "Mr. Sinclair said to two of the volunteers, 'What the devil they bring this man (meaning yourself) and not Manning,' and that this was the reason I warn Manning, for his life was in danger"?—I recollect swearing that.

844. With whom were you at the Stokes Hall meeting? Who else took part at that meeting besides you; was it not after that, and during martial law, that you warned Manning to fly for his life?—Mr. Harris presided, he was called to the chair; Mr. Manning was there; it was after I was flogged in martial law, I warned Manning.

845. As to the Mr. Harris you mentioned, does he live near Muirton; who is he?—He is the Baptist minister at Belle Castle, Manchioneal.

846. About how long do you think Dr. Morris was in the room adjacent to the Post-office and shop on this day of which you speak?—He was there for a length of time, but as to how many hours I am unable to state.

847. Did you swear before the last court martial at camp to the following effect, or in these words: "I was so bewildered I could not go where the soldiers were at the time; I was in the middle of the road, opposite the Post-office; I was between the doors directly opposite the Post-office; I was in the road straight in front of the Post-office box"?—I did say that.

848. Did you also swear before the last court martial, at camp or here, as follows, or to this effect: "I cannot positively say how far the men were taken down from the Post-office to be shot, it may have been 60 yards"?—I did swear that about 60 yards.

849. Did you also swear before the same court martial, at camp or here, to the following effect: "The sight was so frightful I could not go near the men to see if there were any marks of chop or cut on the head"?—I said that after I went down I could not go near to examine whose brains came over his face, because the sight was so frightful; I mean that I could not go near to identify which of the three men had his brains down over his face.

850. Did you also swear at the last court martial, at camp or here, as follows, or to this effect: "I heard the report of the guns, rifles; I saw the guns presented, but owing to the bend of the road, and the thickness of the fence, I could not see the bodies"?—I recollect swearing to that, but I do not recollect saying that it was owing to the bend of the road.

851. Did you not swear just now that you did not go so near as "to say who they were;" did you not use those words; you can give any explanation you like?—I did not say these words, because I know that they were Walton, Miles, and McCall; but I said I did not go near to see who had the brains over his face.

852. Where were you standing, when, as you say, Dr. Morris and Ensign Cullen went to bathe? Did they go together at the same time?—I was standing in the road, opposite the Post-office, when I heard Dr. Morris ask for soap and a towel, and then when they went to the river I went down the road; I cannot tell whether they went together or not; I was not watching them; in fact I could not see as I was going down the road.

853. Then is it true or not, upon your own evidence, that you saw Ensign Cullen and Dr. Morris go to the river to bathe?—When I return from the road I saw them come up from the river side, and Dr. Morris was drying his feet.

854. Where did you see Dr. Morris drying his feet; was he walking along when you say he was drying his feet?—He sat opposite the kitchen in the yard, on a box, and dried his feet.

855. How

855. How long have you been on intimate terms with Manning; you said you were at the Post-office from the 12th October to the 22nd (1865), and you also said "we" had nowhere else to put him, meaning Dr. Morris on the table in the shop?—I should think from about '54 or 55,' I am not certain about the year, but some time about that period.

856. *By Prosecutor.*] You spoke, in cross-examination, of Mr. Creighton; tell the Court what you did for Mr. Creighton, and the reason why you had occasion to do so?—After Mr. Hire's house, Amity Hall was attacked by the rebels; Mr. Creighton was severely wounded, and left in a helpless state; I carried him away from Amity Hall great house in a buggy, having to hold him up till I got to Golden Grove steps, and I carried him up the steps into the house.

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[The Witness withdraws.

Twenty-third Witness for Prosecution.

Eliza Phillips, residing on Holland Estate, being duly sworn, is questioned by the Prosecutor.

E. Phillips.

857. *By Prosecutor.*] Do you remember the time of martial law?—Yes.

858. Did you go to the Iron Bridge during martial law, and if you did, tell what you went for?—Yes, I went there to buy something.

859. Whom did you see when you went to the Iron Bridge?—I saw black soldiers, with one or two white ones among them.

860. What day of the week was it you went to the Iron Bridge?—A Saturday.

861. Did you know any of the soldiers; if so, tell who?—I don't know none but Corporal Hunter.

862. Do you know an officer from a soldier; if so, tell if there were any officers there?—No.

863. What time of the day did you get at the Iron Bridge?—I get there about 8 o'clock in the morning.

864. Did anybody come to the Iron Bridge when you were there?—I was not looking if anybody come.

865. Did you see any prisoners at the Iron Bridge that day?—

The Prisoner objects to this question for the following reasons:

This is an examination in chief, and in a criminal case. The Witness has just now already stated, in answer to a question for the prosecution, that she was not looking to see if anybody came; she is then almost immediately asked for the prosecution if she saw prisoners come, or words to that effect. It is submitted that this is putting an answer into the mouth of the Witness. The word "prisoners" is far too suggestive under such circumstances.

The Prosecutor presses the question, and leaves the matter in the hands of the Court, without replying to the Prisoner's objection.

The court is cleared for deliberation, and decides that in its present form the question is inadmissible. The court is re-opened, and this decision is announced.

866. *By Prosecutor.*] Did you see anything done that day to anybody?—Three prisoners come from Duckenfield; I was in the kitchen, and hear guns fire.

867. Do you know the names of the people who brought the three prisoners?—No.

868. Do you know the names of the three prisoners?—No.

869. Who took the prisoners when they come?—Corporal Hunter.

870. What did Corporal Hunter do with the prisoners?—I don't know what him do with them.

871. What did you see done to the prisoners when they were brought to the Iron Bridge?—I did not see nothing, but Corporal Hunter boxed one.

872. Where was the prisoner when Corporal Hunter boxed him?—In Mr. Manning's door mouth.

873. What do you mean by door mouth?—In the piazza, under the shed.

874. Was the prisoner standing up or sitting down, or how?—He was standing up.

875. Where were the other two prisoners?—The other two were there in the same place.

876. Did you see the prisoners taken from under the shed to any other place?—When I come out of the kitchen I saw them going along the road, on Holland Bay-road.

877. Who was with the prisoners when they were going along the Holland Bay-road?—I do not know them, only Corporal Hunter.

878. Did you see anybody beside Corporal Hunter go with the prisoners down the road?—Yes, I saw soldiers, but I do not know them.

879. What sort of soldiers were they?—I see black soldiers going down the road when I return to the kitchen.

880. Were they all black soldiers that you saw going down the road?—What I saw was black soldiers; I don't know if any white soldiers before them.

881. What did Corporal Hunter do with the prisoners before he carried them down the road?—I did not see him do nothing, but box one.

882. Do you know the place the shop is kept in; Mr. Manning's shop?—Yes.

883. Is there a place to sit in, where there are no goods sold in any room and hall?—Yes.

884. Did you see anybody in that hall or place that day?—No; I was not in the shop; I was in the kitchen.

885. When the prisoners were carried down the Holland Bay-road, what did you see done to them?—I did not see nothing?—I in the kitchen, and hear gun fire

886. What were you doing in the kitchen?—Cooking rice.

887. Whom was the rice for?—I do not know the soldiers the rice belonged to.

888. What sort of men were the prisoners; what colour?—Black.

889. Did you stay in the kitchen all the time you were cooking the rice?—Yes.

890. Were any relatives or family of yours at the Iron Bridge that day?—Corporal Hunter.

891. After the prisoners were taken down the road, who did you see come back?—I was in the kitchen, I do not know.

The Prisoner declines cross-examination of this witness, and she accordingly withdraws.

Twenty-fourth Witness for Prosecution.

J. Hamilton. JOHN HAMILTON, Shopkeeper at Holland, St. Thomas-in-the-East, being duly sworn, is questioned by the Prosecutor.

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892. *By Prosecutor.*] Do you remember the time when martial law prevailed?—Yes.

893. Did you at any time, during martial law, leave your place of business to go in the direction of Golden Grove; if so, state when?—On Saturday, 21st October 1865, I leave Holland to go to Golden Grove, and as I reached the Iron Bridge, where Mr. Manning's shop is situated, I met the soldiers there, black soldiers, so I stopped there with them for a while. During the time I was there I saw constables brought three prisoners from the direction of Duckenfield. As they came, Ensign Cullen go up to Bryan; what they say I did not hear, I was under the shed of the shop; as Ensign Cullen leave Bryan, he order the prisoners to be tied to flog; meanwhile soldiers were tying the prisoners, Ensign Cullen go into the dwelling part of Mr. Manning's place; I saw Dr. Morris come out and go up to Bryan; what they say I did not hear. As Dr. Morris leave Bryan, he said, "Loose them, and take them out one by one;" and they loose them, and take them down below the shop on the road, in the direction of Holland Bay, and they put them, the prisoners, against the bamboo rail, and where they put them I could not stay at the Bridge and see them again; but I could see the soldiers opposite, and I saw when the soldiers fire, and Dr. Morris at the last took one of the rifles, and fire the last volley.

894. Where were the prisoners before they were taken down the road?—Under the shed of the shop; soldiers were tying them to the post of the shop.

895. Do you know who brought the prisoners to the Iron Bridge; tell the names if you happen to know them?—Bryan, Cyphus Wills, and George Colson.

896. Did you know the names of the prisoners, or any of them at that time; if so, state them?—No, I did not know them that time.

897. Did you see any preparation made for flogging the prisoners?—Yes, I saw one of the soldiers was about making a cat.

898. Did you know the names of any of the soldiers present on that day at that place; if so, state them?—I know one, by the name of William Hunter.

899. Where did you first see Dr. Morris, when or after you arrived at the Post-office?—I never saw till he came out and go to Bryan.

900. Who went down the road with the prisoners?—Soldiers, Dr. Morris, and Ensign Cullen.

901. What time of day, as near as you can tell, did the prisoners come to the Iron Bridge?—About 11 o'clock, or thereabouts.

902. Can you tell how many soldiers went down the road with the prisoners?—I did not count them; I cannot tell.

903. You have said you saw the prisoners at the bamboo fence, and then that you could not see them from where you stood; tell the Court particularly what you saw done, and where you stood?—I was under the shed of the shop, and I saw soldiers march the prisoners down the road, as far as where there is a bamboo rail tied to the logwood fence; and after they put them on the side towards the fence, I could not stay and see them where I was, the logwood fence preventing me from seeing them. I saw the soldiers on the opposite side of the road to where the men were placed.

904. Which side did the soldiers stand; speak as if you are looking down the road towards Holland Bay?—On the left side.

905. When the soldiers went down with the prisoners, did they put the prisoners at once on the opposite side to them?—Yes, they put them at once.

906. Were you standing on the ground or on horseback, or anything else at the place from which you saw the soldiers when they were down the road?—I was standing on the ground.

It being now 4 p.m. the Court adjourns till 10 a.m. to-morrow, 27th instant.

ELEVENTH DAY.—27th December 1866.

J. Hamilton. On Thursday, the 27th December 1866, at 10 a.m, the Court re-assembles, pursuant to adjournment. Present the same Members as yesterday, and proceeds with the examination in chief of JOHN HAMILTON.

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907. By *Prosecutor.*] How many guns did you hear, as far you remember?—I don't remember how many guns; I did not notice that.

908. Do you know Dr. Morris; if so, see if he is in this room, and if so, point him out to the Court?

Witness identifies Assistant Surgeon Morris.

909. Did you hear Dr. Morris say anything about the prisoners that day?—Nothing.

910. Did you go back to the Iron Bridge after the Saturday you have been speaking of; if so, state when, and with whom?—I go along with Mr. Brooks from Holland on Sunday morning, next day, with some prisoners; as he got to the Iron Bridge, he turned the prisoners down to look at the dead bodies, and then take the prisoners on to Golden Grove.

911. What dead bodies do you mean?—I mean the three persons who were shot there on the Saturday.

912. Where did you take the prisoners from on the Sunday morning?—From Holland Estate.

913. Did

913. Did you assist in getting the prisoners together on the Sunday morning?—Yes.

914. When did you arrive at the Iron Bridge on the Sunday morning; what o'clock as near as you can tell?—About nine o'clock or after.

915. How many prisoners did you take, and were there any constables? tell the names of as many of the prisoners as you remember, also of the constables?—I do not remember how many, but over a dozen. The names of the constables are Bevis Hunter, Thomas Brown, James Boyd, Allan Bignall, Richard Byon, James Sproul, and Robert Speed. The names of the prisoners I remember are Richard Roden Francis, Allan Rose, Samuel Walker, Sandy Lewis, Richard Marryat, James Francis, Caroline Timothy, Lucy Low, and one named Johnson, I forget his first name, and Morris Brooks.

916. Where did you leave these prisoners?—As I got to Golden Grove I rode on to the stores, and Mr. Brooks take the prisoners to the volunteers and soldiers, who were at Golden Grove great house yard.

917. What time did you arrive at Golden Grove?—It was about 10 a. m.

918. Did you know any of the soldiers or volunteers you saw at Golden Grove, when you arrived there that morning?—No; I did not know any that morning.

919. *By Prisoner.*] Are you the same John Hamilton who gave evidence before the court martial at camp or here, about these same matters?—Yes.

920. How is it, that although you were examined on the part of the prosecution in the case at Up Park Camp about all these same matters, you never made any one statement whatever respecting taking prisoners to Golden Grove, or being near those bamboo rails on the Sunday morning; did you tell Mr. Jackson anything of this kind before you were examined last on oath about these matters?—Because I was brought here about the shooting, and I was never asked anything about the Sunday; I told Mr. Jackson, after the other court martial, and before this one.

921. Have you seen Mr. Brooks since you gave your evidence on oath at the last court martial on Ensign Cullen, about these same matters, or Manning, or Anderson; were you present in Kingston while Mr. Brooks was being examined about these prisoners being taken to Golden Grove on the Sunday morning?—I saw Mr. Brooks in town here since Ensign Cullen's court martial, but we have no conversation; I have seen both Manning and Anderson since the other court martial; I was in Kingston when Mr. Brooks was being examined about taking these prisoners to Golden Grove on the Sunday morning.

922. When first did you tell your story about this Sunday morning and the prisoners to Mr. Jackson; state the day as well as you can; was it since you returned here to give evidence on this case; was it not after you saw Brooks, Anderson, or Manning lately?—I told Mr. Jackson yesterday, for the first time, about these prisoners going to Golden Grove on Sunday.

923. You say you told Mr. Jackson yesterday the first time; did you not do that after this Court had adjourned yesterday, and in the afternoon or evening of yesterday, at Duke-street?—Yesterday afternoon, in Duke-street.

924. Has Mr. Brooks' evidence been read over to you by any person before you were examined here on oath to-day; think, before you answer?—I never saw or hear of it.

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925. Did you, at the last court martial at Camp, or here, ever swear to the name of William Hunter as being present on the day you speak of, or the name of any soldier at all?—I do not recollect what I say then; I do not keep it in mind.

926. You swore here to-day, that you did not know the names of the prisoners at the time; how was it then that you ventured to swear at the last court martial that one of the prisoner's names was "Walton," as if of your own knowledge; was that hearsay, too?—I was told the day of the shooting, that one man's name was Walton; that he had a cast in his eye, and I noticed that one had a cast in his eye.

927. Then, what did you mean by swearing yesterday that you did not know the names of the prisoners at the time, when you now swear as to one man, that you knew him on the very day of the shooting, by being told, and by seeing a cast on his eye?—I was asked yesterday if I knew the men when they were being tied to be shot, as far as I understand it, and I was told that the man's name was Walton, *after* they were shot, about the evening of the same day.

928. You say about the evening of the same day you were told; where were you that evening of the same day?—I was at Holland Estate.

929. Did you, at the last court martial at Camp, swear as follows, or to this effect, in answer to questions: "You say Ensign Cullen heard when Dr. Morris said take them away one by one;" did Dr. Morris say anything else at the time, and answer as follows, "No, nothing more"?—I do not recollect if I answered "No;" it is too long.

930. Did you then also swear as follows, or to this effect: "I did not go to the place where the soldiers fired; I did not go there"?—I have said I do not recollect what I said at the other court martial; this is the third time I say so; but I did not go to the places.

931. Did you also then swear as follows, or to that effect: "The place was crowded with soldiers; I did not observe any other people there at all"?—The place was crowded with soldiers, but I do not know if I swore that at camp.

932. When you were last examined on oath at camp, did you swear as follows, or to this effect: "Where I was I could not see how they were tied, for I could not see them again" (meaning the prisoners)?—Where I was I did not see them tied; I do not know if I swear that at the camp.

933. Did you not then also swear as follows, or to that effect: "I remained at the shop, and I did not go near the bridge before the firing took place"?—I remained at the shop, and did not go down with them; but I do not recollect what I swear about that at camp.

The court is cleared by the order of the President, for deliberation.

On being re-opened, the prisoner is informed that though the Court will not interfere with the course of cross-examination adopted, yet it points out to the prisoner the fact, that testing the recollection of a witness by his answers to questions put on a former occasion cannot really assist the defence, inasmuch as such recollection is totally different from the recollection of facts

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which he states he saw; in the case of this particular witness, as he has more than once declared his inability to recollect what particular evidence he gave in answer to particular questions, the Court is of opinion that a continuation of this course of cross-examination is a mere waste of time.

934. *By Prisoner.*] You said you do not now recollect what you swore at the last court martial; how then do you now recollect about all these matters about prisoners, and shooting on particular days of a year and upwards ago, when you do not now remember about what you swore to only this year, in September, or October, or November. Has your memory been refreshed, and by whom?—My recollection has not been refreshed; but I recollect more what I see than what I have spoken already.

935. Did you deliver the prisoners to any person in command on the Sunday morning, any officer at all; did you see any at Golden Grove when you say the prisoners were delivered to soldiers and volunteers?—I did not deliver the prisoners; Mr. Brooks did. I saw officers, but I did not know them.

936. Were they officers of volunteers or of white troops whom you say you saw when the prisoners were delivered; can you tell the difference?—I cannot tell the difference.

937. *By Prosecutor.*] You said in cross-examination that you saw Mr. Brooks in Kingston, but had no conversation with him, and that you saw Manning and Anderson in Kingston; have you had any conversation with them; have you had any conversation with anybody at all about this business?—With nobody at all, except Mr. Jackson I told yesterday.

938. *By Court.*] What time did you leave Golden Grove that Sunday?—I was at Golden Grove till about 1 or 2 p. m.

[The Witness withdraws.

Twenty-fifth Witness for Prosecution.

G. G. Manning.

George Grant Manning, Postmaster of the Plantain Garden River District, being duly sworn, is questioned by Prosecutor.

939. *By Prosecutor.*] Where were you during the time of martial law?—I was at Duckenfield, Plantain Garden River Post-office, where I was living.

940. Do you remember any soldiers coming to that Post-office; if so, state when, and what soldiers?—On the 21st October 1865, between the hours of 8 and 9 a. m., Ensign Cullen and Dr. Morris, and a company of black soldiers, arrived at the Post-office, where I was, and halted.

941. What did Dr. Morris do when he came?—He went into the room adjoining the Post-office, where I met him, and he laid on the table; I thought he was suffering from fever; I gave him two pillows to put underneath his head and brought him some Florida water; put some on his head and washed his face; he then asked me for a cup of tea; I desired the cook, Cecilia Robinson, to prepare him the tea; I believe he got the tea, but I did not see him drink it; I was with him afterwards; he asked me if I had any potted meat, I said no, but that I could procure him some; I sent to Mr. Kirkland's at Golden Grove and got two or three pots.

942. Did you see any people come to the Post-office that day, after the soldiers came?—Yes, I think about mid-day; about that time three men came in as prisoners, brought by three constables; the prisoners' names are Richard Walton, Miles, and McCall, I think the constables' names were Bryan, Colson, and Wills. Before these men arrived, I heard a noise; the soldiers, said "Prisoners, prisoners; one man escaped;" several of the soldiers went off after the prisoner; they took several directions, but he was not caught.

943. What did you see done with the three prisoners who were brought to the Post-office?—They were tied to a post, one of the posts that supports the shed; one or two soldiers came in and asked me for twine to make a cat, for they said they were going to flog the prisoners; I gave the twine to those who asked me for it, and I saw one of them making a cat outside; at this stage, Dr. Morris, who was lying on the table from the time he came in, that is I believe so, he may have risen, but I did not see him until that time; he passed me, he went through the middle door of the shop and went out to Ensign Cullen, who was standing in the road; I saw Dr. Morris whisper to Ensign Cullen; the soldiers then said "the men, the three prisoners are to be shot, the doctor says so;" they spoke out loudly; I saw them immediately afterwards, a soldier loose them, I do not remember who that soldier was, in doing that one of the prisoners attempted to speak, the soldier boxed him on his cheek, and said, "Hold your tongue Sir, how dare you to speak, you should say your prayers since last night," those were his words. The three prisoners were led off by soldiers who were called out with their rifles; then I saw Ensign Cullen, Dr. Morris, the three prisoners, and the soldiers with their rifles, all march down the road leading to Holland Bay; the distance is about sixty or seventy yards, where they stopped; that is my idea of the distance, but it may be more or less. Then I saw the three prisoners taken across the road opposite, and tied to a bamboo draw rail. I could only then see the three heads of the three prisoners; I heard the report of rifles, I saw one prisoner's head bow in front, I heard another report and another head bowed in like manner, and a third report of rifles and the last head bowed; I then saw Dr. Morris discharge a rifle at one of these men that were shot; he walked up to the Post-office afterwards and moved about, he was not stationary; I gave soap and a towel to Duany to be given to the doctor, a little time afterwards I saw the doctor ascending from the river, and when he got opposite my kitchen he sat down, wiped his legs and feet, and buttoned on his leggings; I saw him some time afterwards on horseback; and he went off to Golden Grove and the soldiers all. The reason, I know, he went to Golden Grove, he requested me to send him on some soup which my cook was preparing for him; the soup was sent by my directions, and I think carried by a lad of the name of Clark.

944. Before the prisoners were taken down the road, did you say anything about removing them;

them; if so, state what?—Yes; I heard, I can't say from whom exactly, that the three prisoners were to be shot just in front of my place. I went to the door. I did not address any person particularly, but simply said, "Oh! don't shoot them there; take them away."

945. Where were you, and in what position, when you saw the rifles fired and the heads drop as you have described?—I was standing at the threshold of the middle door of the shop, and stooped a little, to see what was being done to the three prisoners.

946. What made you stoop?—The shed in front prevented me from seeing, if I stood upright.

947. How many soldiers went down the road with the prisoners?—There could not have been more than 10, 12 to 14; I think 14, perhaps, is too high a number. I range them from 10 to 12.

948. What time of the day did the officers and soldiers go away from the Iron Bridge that day, Saturday?—To the best of my knowledge, between 2 and 3 p. m.

949. Did you see any of the soldiers go away from the Iron Bridge before the others?—I did not observe.

950. How long did you remain at the Post-office; that is to say, when first did you go away, after Saturday the 21st of October?—I never left until 8 o'clock on Sunday evening, the following day, that is to say, to make my exit. I did go to Bath during Sunday, but then I returned.

951. Did you see any volunteers pass the Post-office the next morning, 22nd October 1865; and if so, state when and who, if you know?—Early in the morning of the 22nd, just about 7 o'clock, or a little after, I was standing at the door. I saw a company of volunteers advancing to my place, all on horseback. When they came opposite, I made out a Mr. Brandon, riding in company with another person whom I do not know. These two were in the advance. I then saw in a body Mr. Harrison, Mr. Duffus, I think Captain Astwood; Captain Ford, who was in the rear. There were a good many, but I do not recollect the others. Captain Ford spoke to me.

952. What road did these volunteers take?—They went over the bridge towards Amity Hall,

953. Did you see any soldiers that Sunday morning; and if you did, at what hour, and did you say anything to them?—I did see a black soldier, and I spoke to him. This was after the volunteers had gone over the bridge, I suppose 8·30 a. m.

954. Did you see anybody else pass the Post-office that Sunday morning?—Not any persons of note; there may have been a boy or girl, but no one that I would notice.

955. You have said you saw nobody of any note; name, as near as you can, all the persons you saw come to or pass the Post-office that Sunday morning?—Persons have come to, but did not pass the Post-office. Four or five men came over the bridge, and stopped just about where the blacksmith's shop is; they had hoes and pickaxes, or such implements as they could dig with. I spoke to one of those men, whose name is Wedderburn.

956. Did you see any other person at the Post-office that morning?—Yes; I call to mind a Mr. Brooks, a volunteer, with several constables, brought prisoners or were conveying prisoners; they stopped at the Post-office. Mr. Brooks, the constables, and the prisoners went down the road leading to Holland Bay, and stopped at the place where the three men were shot, and viewed the bodies; that is, I saw them stop and view that very place. They went on in the direction of Golden Grove.

957. Did you know Doctor (afterwards Archdeacon) Trew, and his wife, and what was her first name; and had she any brothers; if so, give their names?—I knew Doctor Trew ——

> The prisoner here objects to this question on the following grounds:—
>
> The prosecutor has no right to suggest the name of any person who was present on this same time in question. He should ask the witness generally as to his knowledge as to persons, and of their names.
>
> The prosecutor replies.
>
> In answer to the objection, all I have to say is, that the people whose names are asked for, have been dead many years. My subsequent examination will show what the information is which I seek to lay before the Court, and how it has been called for by the prisoner's examination of previous witnesses.
>
> The prisoner declining to make any rejoinder, the Court is cleared for deliberation, and decides that the question is admissible. The Court is re-opened; this decision announced, and the witness directed to reply to the question.

I knew Dr. Trew; his first wife's name was Ann Bygrave. She had two brothers, Richard Bygrave and Thomas. I did not know Richard, but I knew well Dr. Thomas Bygrave.

958. Did Richard Bygrave die, leaving any female child, and by whom was she brought up, and what was her name?—He died leaving three daughters, Margaret, Ann, and Sarah; they were all brought up by Mrs. Archdeacon Trew, their aunt, and by their uncle, Dr. Thomas Bygrave.

959. Was any of these three daughters married, and if so, to whom?—The youngest got married to one James or John Marshall, of the parish of Manchester; the eldest, Margaret, to myself, in the year 1840. At that time she was an infant-school teacher at the Mico Institution.

960. What are the ages of your eldest and second son?—My eldest son was born in 1843, so he is about 23 years of age; the second is 21 years old.

961. Have you any child by a Maroon or any other woman, except your children by your wife?—None other children but by my wife. I had no connection or relations with Maroons whatever.

962. What sort of ground is the district of the Plantain Garden River Post-office, and particularly the grass piece opposite the Post-office, and onwards on the Holland Bay road?—A damp soil, as the river overflows its banks once or twice every year; a heavy shower of rain would find the grass piece before my shop in a pool of water.

963. How long have you been Postmaster, and living at Duckenfield, that is at the Plantain Garden River Post-office?—It is entering 12 years, I think, since I have been living at Duckenfield. I have been Postmaster over 15 years.

964. Have you a residence at any other place than the Plantain Garden River Post-office; and if

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if so, state where, and where your family resides?—I have a residence in Kingston, and my family are all living in Kingston; that is to say, my children with their mother.

965. Do you know Dr. Morris; if so, see if he is in this room, and point him out to the Court?

Witness identifies Assistant Surgeon Morris.

966. In what parish is the Plantain Garden River Post-office and the Duckenfield Iron Suspension Bridge?—St. Thomas-in-the-East.

967. In what county is the parish of St. Thomas-in-the-East?—Surry.

968. *By Prisoner.*] Are you the same person who fled for your life upon information furnished to you by John Anderson the teacher, during martial law, and were you examined as a witness at the court martial at Up Park Camp?—I am the same person that John Anderson gave information to with respect to my safety, and the same person who gave evidence at Up Park Camp.

969. Are you aware that Ensign Cullen and Dr. Morris received instructions to take you a prisoner, and bring you before Captain Hole at Muirton as a leading rebel during martial law, and that they were in search of you during martial law?—I was never aware of that; and if there was an order to apprehend me, who has cancelled that order? I was no rebel, nor a leading rebel.

970. Are you not aware that Ensign Cullen and Dr. Morris were in search of you on the Monday after you received information from John Anderson, and after you absented yourself from the Post-office from the Sunday night, and why did you absent yourself?—I was not aware of that. On information by Anderson, stating that I would be apprehended and be shot I went away. I would not risk to remain, notwithstanding I was innocent.

971. How long did you absent yourself from your shop, from that Sunday night; what became of you; and how long were you away, and where?—I was twelve days away; twelve days in the bushes. One or two humane friends brought me food.

972. Had you time on that Sunday night, any time to remove your goods from your shop, or did you fly at once when Anderson told you your life was in danger?—I went off at once, and left my boy and cook in charge, with instructions to send for Mr. Thomas Smart to take care of my place.

973. While other places all round the Post-office were plundered by the rebels, did your goods remain safe during your absence?—When I left there was no outrage being committed by the rebels, that was put under a week before I had to leave.

974. Did you ever remove your goods from your store; if so, when; and how do you now account for all other stores being emptied, and yours not touched?—I did remove a part of my goods on the Thursday evening of the outbreak. I could only manage a part. The rebels did enter my premises in my absence, and took what was comeatable.

975. Are you not aware that the office of deputy postmaster is entirely dependent upon the Postmaster of Kingston, and that the pay is so small that it is difficult to get persons to fill the office?—I am aware that the office of deputy postmaster is dependent on the Postmaster of Kingston. I am also aware of the second part of the question, with the exception of some of the offices.

976. What relation do you say the Mr. Brooks who gave evidence here is to you?—He is no kin to me whatever.

977. Will you undertake to swear to your personal knowledge that that Duckenfield grass piece, of which you spoke, ever was overflowed by the river between October 1865 and September 1866?—I have no recollection that the river has overflowed its banks within the precise time stated.

978. Just after you were talking with Captain Ford, and attending to his request, did you go to get what he asked for; on that Sunday morning was he alone, or with others at the time when he stopped to speak with you at your shop on the Sunday morning?—He was not alone; I went into the shop, and brought what he asked for.

979. Is this the first time you have stated on oath that on this Sunday morning you saw Mr. Brooks, prisoners, and constables, stop at the Post-office, go down the road leading to Holland Bay, and stop at the spot where the three men were shot, and view the bodies, and look at the very place where you say the three men were shot, and then go in the direction of Golden Grove?—Yes, this is the first time.

980. Did you come out of the shop during this time of which you have been speaking of the bringing in of prisoners, the shooting and firing; did you come out at all of this shop until you heard, as you say, the report of guns; did you not swear to that effect before these same gentlemen at the court martial at camp?—I was in the shop the whole time; from the time the prisoners came in till they were shot, I was in the premises. Yes, I did swear that; that is, that I never came out of the premises during the whole transaction.

981. Did you not tell Ensign Cullen that you removed all your goods yourself alone (as your servants "took fright") into the bush, and that you brought them down yourself, and that when the above-named officer arrived, your store was well filled; did you not also state that the reason your store was not touched was because you were married to a Maroon (in answer to a question put by Ensign Cullen), on the Saturday of the march from Manchioneal to Golden Grove, and at the Post-office?—I have no recollection of having any conversation of that sort to Ensign Cullen. My store was not well filled when Ensign Cullen arrived there; he saw it in a confused state. I remember this, that Ensign Cullen said to me, "Don't give the men any drinks," he meant rum or ardent spirits; they got none, for I had none on sale; I don't remember having such a conversation with Ensign Cullen as to a Maroon.

982. Can you tell about how many soldiers altogether came with Ensign Cullen on that day at or about your shop, on this same march?—I should think 50; they appeared to me to be a full company.

983. Did the soldiers generally who came in company that day with Ensign Cullen have beer and other refreshments at your shop that same day?—They had.

984. Since you gave your evidence at the last court martial at camp, have you been in company with other witnesses for the prosecution in these barracks, and in Kingston and in Duke-street, at different hours of the day, till night sometimes

sometimes at 11 o'clock, or at other times?—No; I have not been in company directly with those persons, for the major part of them I do not associate with; I may have seen and have seen them repeatedly, but had no communication with them whatever, that is to say, on this matter.

985. When did you first communicate to Mr. Jackson in Kingston the statements, which you have made as to the prisoners and Mr. Brooks at the Post Office on the Sunday morning; tell the day as accurately as you can; was it not yesterday?—

The Prosecutor objects to this question in the following terms:

I, as Prosecutor, object to any questions being asked importing the name of other persons not recognised by the Court, and who are not in a situation to protect themselves. As Prosecutor, I am entitled, and it is my duty to get up my case by every legitimate means at my command, and under such legal assistance as I may command. I do not object to the question, because I have no fear of the answer: but I object to the principle of a line of examination which seems to assume that I am not to inquire into, and bring before the Court facts which intermediately come to light.

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The Prisoner replies,—

That the grounds mentioned in the objection are, it is respectfully submitted, wholly beside the question of the admissibility of the evidence. I have no desire whatever to do anything in derogation of the rights of the Prosecutor, or of due courtesy to him. I have a right, however, to test the credibility of the Witness by those means, and to see how and when; this new evidence has only come up at the last moment from a former Witness in these same matters; suppose it turns out that he has never mentioned this at all till to-day, this might throw doubt on the veracity of the Witness and his statements.

The Prosecutor declines making any rejoinder.

It being now 4 p.m., the Court adjourns till 10 a.m., to-morrow, the 28th instant.

Twelfth Day, 28th December 1866.

On Friday, 28th December 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present the same Members as yesterday, and proceeds with closed doors to deliberate on the objection raised yesterday by the Prosecutor, respecting Question 985.

The Court decides that the question may be put with this alteration as suggested *vivâ voce* by the Prisoner, viz., that the words "the Prosecutor" be substituted for Mr. Jackson's name.

The Court being re-opened, this decision is announced, and the question in its amended form is read out to the Witness, George Grant Manning, who is directed to reply to it.

Witness.] I have no recollection of the day. I may have first mentioned Mr. Brook's name to those seeking information from me. I am no voluntary witness in this affair.

986. *By Prisoner.*] Have you seen Brooks and Hamilton since they have been up here to give evidence or in St. Thomas'-in-the-East since the last court martial at Up Park Camp?—I have seen Hamilton several times, that is to say, I meet him in the streets. I have seen Brook's too.

987. Did not Ensign Cullen at the Post Office while he stayed there, apply to you for a buggy to take Dr. Morris to Golden Grove?—He applied to me for a vehicle of any description; I told him my own was broken and could not be used.

988. Do you not know why Ensign Cullen made that application to you, what were the cause?—He told me his colleague was suffering from fever, that he wanted the vehicle to take him somewhere, to move him on, but I do not recollect the place; by his colleague I mean Dr. Morris.

989. Will you undertake to say that you were not told by Ensign Cullen that the vehicle was wanted to take Dr. Morris that day to Golden Grove?—He may have said that, but I have no remembrance of that being the place.

990. About what time of the day do you say that Dr. Morris and Ensign Cullen went together to bathe in the river?—It must have been after 12 o'clock, for it was after the shooting, near one p.m. I should think; I am speaking of time to the best of my knowledge, for I made no note of it, and I am not giving it as being exact.

991. About how long altogether do you think that Dr. Morris was lying ill in your premises; state about the whole time, to the best of your knowledge?—He must have been lying on the table fully two hours, for after the shooting he was not confined to any place; he did not lie on the table again, did not go back.

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992. Was not the vehicle asked for just about the time when the troops were about to start for Golden Grove from the Post Office?—No; immediately as they came in Ensign Cullen asked me what assistance I could afford him for his colleague, to remove him.

993. Did you, or not, send for a cart, or try to get one to take Dr. Morris; and, if so, state at what hour was that?—I did not; I never sent for any cart at all; in fact I never sent out at all to procure a cart or any vehicle.

994. Do you not know that Dr. Morris, being obliged to ride, was scarcely able to sit on his horse on his departure for Golden Grove from the Post Office that day?—I do not know that; when the soldiers were leaving I saw Dr. Morris on horseback, and I believe he had then sufficient strength to mount without the assistance of any one.

995. Did you not see a black soldier, the hospital orderly, with other soldiers, help him to mount; did you see him yourself mount at the very time?—I did not see him when he was mounting, but I saw him on horseback; my reason for saying he had sufficient strength is because I saw him walking about after the shooting of the three men.

996. Did you not tell Ensign Cullen that day, at the Post Office, that you were trying all you could

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could to get a cart or some vehicle for Dr. Morris, or words to that effect?—No, I have no recollection of such conversation.

997. Did you or not hear the order given to "fire;" did you not swear at the last court martial that that was the language which was used for the shooting of the prisoners?—I did swear to that language, and the word "fire" was what I heard; I distinctly heard that word used once.

998. *By Prosecutor.*] Do not heavy rains fall twice a year in this island, called "seasons"; tell what months these usually come, and whether they came in the years 1865 and 1866?—Yes, the seasons; the rainy seasons set in in May and October; sometimes they set in in the beginning of November, and then they do not come in October. In 1865, during martial law, there had been heavy showers of rain; that is all I remember in that year. In 1866 I was in Kingston at the time of the rainy seasons.

999. Where were the rest of the party of volunteers who passed on Sunday morning when you went into the shop to give Mr. Ford what he asked you for?—At the time Mr. Ford spoke to me, those in advance were going over the bridge; as there were a good many of them, they had to move on slowly, but they all went over the bridge,

1000. You have said that you have seen Brooks and Hamilton in the streets since the last court martial; have you had any conversations with them, or with any of the other witnesses, on the subject of this prosecution?—Nothing particularly; we talk of being kept in town, loss of time and business, and all that sort of thing.

1001. *By Court.*] When the soldiers arrived at the Post Office on Saturday, were many of them mounted, and what did they do with their horses during the halt?—Most of them, I think, were mounted; their horses were led into the grass piece, Duckenfield, and my own.

1002. From where you were standing, could you see whether Dr. Morris did anything with the rifle, besides discharge it, as you have stated?—Nothing else, but seeing him present it, and the discharge of the rifle.

1003. Will you explain why you did not try and procure a vehicle, when applied to by Ensign Cullen, your own being broken at the time?—For many reasons; first, it was a post day; I was waiting for a post; it was not the usual post day; but at that time there was no regularity in the conveyance of the mails; the other reason, myself was much needed to watch and to care my goods, for it was with difficulty I had to prevent the soldiers from imposing on me; they did not wish to pay for what they asked for, though, with civility from myself, they paid me what they took; for these reasons I would not venture to leave my shop.

1004. Did you mention to any of the volunteers you saw on Sunday morning the fact that three men had been shot the day before and were then tied to the bamboo fence; if not, why did you not do so?—Mr. Ford was the only person who spoke to me; none of the volunteers besides Mr. Ford spoke to me; I did not mention the circumstance of the three men being shot to Captain Ford, who was the only person who spoke to me at that time of the morning; I did not choose to mention it, moreover there was no time; Mr. Ford was anxious to follow the others.

1005. Did you see any white soldiers pass the Post Office at any time on Sunday, that is besides the volunteers you have mentioned?—I did not notice any.

1006. At what time did you leave the Post Office on Sunday the 22nd for Bath?—About 12 o'clock.

1007. When the river overflows its banks, does it cover the road in front of the Post Office?—It covers the road and the grass piece in front of the Post Office; about two feet depth of water.

1008. Can you tell how many soldiers fired at each prisoner at the bamboo rail on Saturday 21st October 1865?—I cannot tell.

1009. You have said that you sent to Mr. Kirkland's for "potted meats" for Dr. Morris; explain why you did not by the same messenger send and ask Mr. Kirkland, or some other person, for a cart or vehicle?—I suppose at that time I had quite forgotten the request of Ensign Cullen; he did not make it such an urgent case; simply asked me once; when I said I had none, he did not press it.

Before withdrawing, the Witness requests permission to amend an answer given by him during cross-examination yesterday to Question 981, and states that not only does he not remember holding any such conversation with Ensign Cullen relative to a Maroon woman, but that he now most distinctly swears that no such conversation took place.

[The Witness withdraws.

Twenty-sixth Witness for Prosecution.

Bevis Hunter, Fisherman and Labourer, residing at Plantain Garden River Bay, being duly sworn, is questioned by the Prosecutor.

B. Hunter.

1010. By *Prosecutor.*] Are you a Constable, and were you one during martial law?—I am a constable, and was one during martial law.

1011. Where did you live during martial law?—Plantain Garden River Bay.

1012. Did you go anywhere particular on duty as a constable during martial law?—Yes, I did, to Holland Estate.

1013. When did you go, and for what purpose?—On Tuesday in the month of October; I was called upon to be a constable to go about and find things rebels rob.

1014. Did you take up any rebels or prisoners?—I take up prisoners.

1015. When did you take up the prisoners?—Sunday in October, 22nd.

1016. Who went with you, or did you go with, to take up the prisoners?—Volunteer Brooks.

1017. Can you tell the names of any of the prisoners; do so, if you can?—Morris Brooks, James Theodore Henderson, Richard Roden Francis, Samuel Lewis, Richard Marryat, Samuel Brittan, Allan Rose, James Francis, Thomas Russell, Abbot Johnson, William Hall, James Brown, Solomon Simpson, Frank Cox, Samuel Walker, and there were others.

1018. Were you the only constable, or did any others go with you; if so, tell their names?—John

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John Hamilton was with me, and Thomas Brown, Robert Speed, James Boyd, Allen Bignell, Richard Byon, and James Sprqul.

1019. Where did you take the prisoners to?—To Golden Grove.

1020. Did you stop anywhere before you got to Golden Grove?—Yes, at the Iron Bridge.

1021. What was done with the prisoners at the Iron Bridge?—When they get to the Iron Bridge, Volunteer Brooks say to march the prisoners down here, to see their three countrymen; what a beautiful sight. The prisoners went down, and see the bodies below the Iron Bridge, on the road that go to Holland Bay or Plantain Garden River Bay, it is all the same bay.

1022. Did you go down the whole way to where the three bodies were?—Not very near.

1023. Did you go far enough to see anything?—Yes.

1024. What did you see?—I get a glimpse of the body of a man.

1025. Where did you stand; and explain what prevented your seeing more than you have said you saw?—I stand a little distance off. I did not go exactly where the prisoners stand. I was sick with rheumatism (gout) that night, Saturday night, and the morning, and did not wish to go further.

1026. How far down did the prisoners go?—They go far enough below the bridge.

1027. Did the prisoners see the bodies; speak of your own knowledge?—The prisoners and constables see the bodies; had a full view of the bodies.

1028. What time of day did you reach the Iron Bridge; tell as near as you can judge?—To the best of my knowledge, I think it was 10 o'clock, or a little after.

1029. Where did the prisoners go after they left the Iron Bridge?—To Golden Grove Estate.

1030. Did you go with them; if so, tell what became of the prisoners when you got there, who delivered them up, and to whom?—I went with them; we, the constables, delivered them up to the soldiers; we were ordered to deliver them up by Volunteer Brooks.

1031. Do you know what soldiers you delivered them up to?—They were black soldiers.

1032. How long after you arrived at Golden Grove did you deliver up the prisoners?—We were in the Great House yard for half-an-hour good, for a good while before Volunteer Brooks came from the Great House, and say to take them to the soldiers.

1033. *By Prisoner.*] Is this the first time you have given your evidence on oath about this matter?—The first time.

1034. Can you read or write?—No.

1035. Have you seen Mr. Brooks or Manning before you gave your evidence here to-day?—When I came down last week, I saw them about here.

1036. Did you yourself walk or ride on the Tuesday you spoke of?—I was called from the Bay to Holland, to be a constable, on Tuesday, and I walked.

1037. Did you ride or walk from Holland Estate to the Iron Bridge, and then to Golden Grove with prisoners?—I walked.

1038. What is the distance from Holland Estate, where you say you took prisoners to the Iron Bridge?—I can't say what the distance.

1039. Did you mention to any one for the prosecution, in Kingston, the statements you have made here to-day, after you had seen Manning and Mr. Brooks last week?—I have had no chat with anybody about it, since I came to Kingston, except Mr. Jackson. I speak to Mr. Jackson before I see Mr. Brooks or Mr. Manning. I was not near them for two or three days after I come up.

1040. Tell as well as you can the day on which you told this story to the gentleman whose name you just now mentioned?—Tuesday before last.

1041. Did you not see Manning and Brooks before you came up to Kingston; did you not see them in St. Thomas-in-the-East?—Yes; a long time before I know I was coming up to Kingston. I meet them walking in the parish, that is all.

1042. How was it that you came up to Kingston; who sent you, or told you to come up?—I get authority from the Court; send for me (*Witness shows his Summons*).

1043. To whom did you first mention this story you have told here to-day?—Mr. Jackson.

1044. You say that on Tuesday you did duty as a constable, and you took prisoners on a Sunday; what were you doing from the Tuesday till the Sunday?—I have already say. I go about searching for goods stolen. I continue night and day routing.

1045. You say you cannot read or write; how do you come to know the date was the 22nd of October when you say you took prisoners?—I know it was the 22nd; I count from the beginning of the month.

1046. What day of the month was the Sunday before that 22nd?—I cannot say.

[The Witness withdraws.

Twenty-seventh Witness for Prosecution.

THOMAS WEDDERBURN, Head Man of Gang at Amity Hall Estate, being duly sworn, is questioned by the Prosecutor.

T. Wedderburn.

1047. By *Prosecutor.*] Do you remember the time of martial law; where did you live at that time?—I remember the time of martial law, and I lived then at Amity Hall.

1048. Did you go anywhere during martial law; tell where to?—Only to the Iron Bridge, where we buried the man.

1049. What part of Iron Bridge did you go to?—To Duckenfield grass piece.

1050. What did you see when you got there?—I see three men tied on a bamboo fence.

1051. Were they alive or dead?—Dead.

1052. Did you know at that time any of these three men?—I don't know the men by name.

1053. Who went with you to the place you speak of?—Richard Taylor, Natty Wilkie, Charles Robinson, Zachariah Bayley, John Wright, David Thomas, William Huntingdon, and Harriet Warren.

1054. What day of the week was it you went to the place?—Sunday; I know the month, but not the day; it was October last year.

1055. What

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1055. What time of the day was it when you got to the place, as near as you can judge?—Eleven o'clock.

1856. What did you do when you got to the place?—We go and dig a hole, and we loosed the three men off the fence, and we put them into the hole; two side by side, and the one at the feet; after we buried them, then we go away.

1057. Did you ever go back to that place?—No; from after burying, I never go back till we dig up the bones.

1058. When did you dig up the bones?—This October gone.

1059. Was any gentleman there at the time you dug up the bones?—The doctor was there; I don't know his name.

1060. Did you notice anything upon any of these three men when you were burying them?—One have on trousers with a shining band round his waist.

1061. What was the band made of?—Glazed leather with a buckle at the front.

1062. How did you know the place to go to to dig up the bones?—Well, we dig the grave by the side of a bastard cedar stump.

1063. Where was the grave dug, and the bodies buried?—On Duckenfield land.

1064. How far was the grave from the fence to which you saw the bodies tied?—(*Witness describes it as being the breadth of this room.*)

1065. Do you know the Post-office at the Iron Bridge?—Yes.

1066. How far is the fence to which you saw the bodies tied from the Post-office?—As far from this house to that barracks (*pointing through the window*).

1067. How did you find the bodies when you dug them up?—The flesh all rotting off, and leave the bones.

1068. How did you find them lying in the ground?—They lay same as we bury them; side by side the same.

1069. When you dug up the bodies, did you find anything else?—Yes. Find a piece of strap, and a piece of rope, and a sixpence, and a pipe.

1070. Who helped to dig up the bodies?—Natty Wilkie, John Wright, William Huntingdon, Richard Taylor, Charles Robinson, David Thomas, Zachariah Bayley, Harriett Warren was there, but she did not dig, being a female.

1071. What made you go and bury these bodies?—I in my house, and Zachariah Bayley, come and call me, and what he told me made me go. He told me three men were shot at the Iron Bridge, and some soldier passing by said we must go and bury them.

1072. *By Prisoner.*] Are you the same witness who was examined at the last court martial at camp, or here, about this story?—Yes. I was examined in this house, this barrack here.

1073. *By Court.*] How were the three dead bodies clothed when you buried them?—One have on a white flannel, one is naked, have on no shirt at all, and one have on an old white jacket; they all have on trousers. None had boots or shoes; I did not see any.

1074. Can you tell which way you placed the heads of the three men in the grave?—The heads up, and the feet towards Holland Bay.

1075. Did you observe whether there was any difference in the height of the three men?—I did not observe.

1076. Take these three pens, the inky ends are the heads of the men; show exactly how you placed them in the grave?—(*The Witness places two of the supposed heads on a level, and the third head between and lower down than the other two.*)

[The Witness withdraws.

Twenty-eighth Witness for Prosecution.

HARRIETT WARREN, residing on Amity Hall Estate, being duly sworn, is questioned by the Prosecutor.

H. Warren.

1077. *By Prosecutor.*] WHERE did you live during martial law?—At Amity Hall.

1078. Do you remember going from Amity Hall about anything during martial law?—Yes; I went to the Iron Bridge last year, October 22nd; I went to see three men tied to the bamboo fence.

1079. What did you see done when you got there?—I saw them tied to the bamboo fence with their heads hanging down; they were dead; I saw one skull mashed; the brains fall out, and the fowls eat them; another have a wound or cut on his belly side; and one have on a leather band round his waist.

1080. What did they do with the dead mens' bodies?—John Wright, Zachariah Bayley, Thomas Wedderburn, Richard Taylor, Charles Robinson, Natty Wilkie, William Huntingdon, and David Thomas dig a hole and put them two side and side, and one at the feet, side of a bastard cedar stump.

1081. What bamboo fence do you mean to which you say you saw the dead bodies tied?—On Duckenfield land.

1082. Did you know any of the three men at that time?—I know them; they belong to Duckenfield; one, named Tommy Miles, one Richard Walton, and one John M'Call.

1083. Where was the grave dug; that is, how far from the fence to which you saw the bodies tied?—From here to that table (*pointing to one about* 10 *paces distant*).

1084. Did you go back again to that place at any time; if so, say when?—No; never go back till them dig up the grave; I do not remember the month, but it was a Wednesday day.

1085. Who went with you, or whom did you see there?—The same men who bury them.

1086. Did you see any gentleman there, and do you know any?—I do not know any but Colonel Daniell and Mr. Jackson; there were some more gentlemen, but I do not know their names.

1087. Were the bodies dug up, did you see?—Yes; I see them.

1088. How were the bodies found in the ground?—Find pieces of bones; dig up pieces of bones.

1089. Did you see how they were lying in the grave; the bodies?—No; where they strike in the grave the bones come up; but they find two skulls same as they put them, and the other one down at the other two feet.

1090. Are

1090. Are you quite certain that the spot of ground you saw the bodies taken from is the same spot of ground you saw them buried at in October last year?—Yes, the same spot; I mark it by the bastard cedar stump.

1091. You have said the bodies were buried on the 22nd of October, last year; how do you know it was the 22nd of October?—It was a Sunday day. I never before saw dead bodies tied to a fence; that make me remember the day. I know it by remembrance in my head.

1092. Are you a married woman?—I live with a sweetheart about seven year now, same as my husband.

1093. Who is the sweetheart; what is his name?—His name is John Wright.

1094. Is that the same John Wright whose name you have mentioned as one of the people who buried the bodies?—Yes.

1095. What o'clock was it when you went to the Iron Bridge that day?—I don't know the time; I did not see the clock; I did not hear any clock strike.

1096. Did you go to church that day?—I was to go; but there was no church that time, and I went back to my house and sat down. *H. Warren.* 28 Dec. 1866.

1097. Did you dress to go to church?—I did not dress. I eating my breakfast, and don't go again. I sit down.

1098. How did you know there was no church?—There was no church in martial law, nobody went to church; no church open.

1099. *By Prisoner.*] Are you the same witness who was examined at the last court martial here, and swore you could not read or write, or remember the date when the bones were dug up this year?—Yes.

1100. What date was the Sunday next after this 22nd October that you spoke of; do you remember this other date; tell what it was?—I don't remember it; it slip out of my mind.

1101. *By Court.*] Can you say which of the three men had his head mashed and brains falling out, and which had a wound in his belly?—Richard Walton have the wound in his belly side; I could not tell who the one was with the head mashed.

[The Witness withdraws.

Twenty-ninth Witness for Prosecution.

Zachariah Bayley, Labourer, residing at Amity Hall, being duly sworn, is questioned by the Prosecutor.

1102. [*By Prosecutor.*] Where did you live during martial law, and do you remember anything particular happening at that time?—I lived at Amity Hall Estate. I remember, on 22nd October, two black soldiers, passing Amity Hall, told me to go and bury three men at the Iron Bridge, and to get others with me to go and bury the three men. I went and get some more men with me, and went to the Iron Bridge, when I saw the three dead bodies tied upon a bamboo fence; and we go and dig a hole, and cut the bodies from the fence and bury them in Duckenfield grass piece. *Z. Bayley.*

1103. Can you read and write?—Yes.

1104. How far from the bamboo fence to which the bodies were tied did you bury them?—Half-a-chain.

1105. How far is the bamboo fence from the Post Office?—I do not know precisely, but I think it is two chains or more.

1106. You have spoken of the 22nd of October; tell the year?—One thousand eight hundred and sixty-five.

1107. In what direction from the Post Office is the bamboo rail, on what road?—To Holland Bay.

1108. How did they bury the bodies; that is, how were they laid in the grave?—Two side by side, and one below the feet of the other two.

1109. Did any one accompany you to bury these bodies; tell some of the names?—William Huntingdon, John Wright, Charles Robinson, Richard Taylor, Natty Wilkie, David Thomas, Thomas Wedderburn; there was one female with us, Harriett Warren; she did not bury.

1110. What time of the day did you bury the bodies?—Between 12 and 1 o'clock.

1111. Did you know any of the men, the dead men who were tied at the rail?—No.

1112. How did you find the bodies, in what state?—Their hands tied between their backs, tied to the bamboo fence.

1113. How did they look?—One of their brains over the face, and the other two with blood; I did not observe anything more.

1114. Did you go back to that grave at any time?—Not before I went to dig up the bones.

1115. How did you know the grave?—By a bastard cedar stump at the foot of the grave.

1116. Did you see the bodies dug up; if so, where were they taken from?—I dug them up myself, from the same place I bury them.

1117. Were any gentleman present when the bodies were dug up?—Yes, Mr. Jackson and Colonel Daniell, and a doctor.

1118. *By Prisoner.*] How long did you take to bury them, the bodies; how long were you digging the hole?—I do not know; I have no time-piece; we were in a hurry, and I do not know how long we take to dig the hole.

1119. Will you state whether it was an hour or half-an-hour, or two hours; you had plenty of persons with hoes and shovels, had you not?—There were plenty of persons, but I do not remember how much time we take to dig it.

1120. How many feet did you dig the hole; did you bury the bodies the same depth as other dead bodies; show about how deep?—We could not bury the bodies same as other bodies, because we were in a hurry; we bury them about three feet deep.

1121. Did you take spells with each other in digging; and dig as you do in cane fields or provision grounds?—We did take spells to dig, because some have no hoes, and some have no shovels, and all of us could not hold in the grave same time.

It being 4 p.m. the Court adjourns till 10 a.m. to-morrow, the 29th instant.

Thirteenth Day, 29th December 1866.

On Saturday, the 29th of December 1866, at 10 a.m., the Court re-assembles, pursuant to adjournment:—Present, the same Members as yesterday, and proceeds with the cross-examination of Zachariah Bayley.

Z. Bayley.

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1122. *By Prisoner.*] When you were examined at the previous court martial on the trial of Ensign Cullen, did you not then state you only knew it was a Sunday you buried the three men; how is it you now remember it is the 22nd October?—I think I stated the 22nd too.

1123. Which of three dead men was it that had his brains over the face?—I do not know his name.

1124. *By Prosecutor.*] You have said you were "in a hurry" in digging the grave; why were you in a hurry?—Because they say the soldiers come and see us there, they shot us.

1125. *By Court.*] Did you that Sunday morning see any soldiers or volunteers about the negro houses of Amity Hall?—Yes; I saw volunteers come there that same Sunday.

1126. Was that before or after you buried the bodies?—Before I bury the bodies, but I do not know the hour. I was in the negro house, Amity Hall, one of the constable's houses, when I saw the volunteers.

1127. What were the volunteers doing, and do you suppose they saw you?—Yes; they saw me. At that time they come from the burning of the meeting-house; two or three chains from the constable's house where I was.

1128. Can you tell about what hour the two soldiers gave you directions about burying the three dead men?—About 10 or 12 o'clock; I do not know, but I guess it was about 11 or 12 o'clock; it was after I saw the volunteers.

1129. What sort of soldiers were they, and were they walking or on horseback?—Black soldiers; they were walking.

[The Witness withdraws.

Thirtieth Witness for Prosecution.

Thomas Brown, Head Wagon-man, on Holland Estate, being duly sworn, is questioned by the Prosecutor.

T. Brown.

1130. *By Prosecutor.*] Are you a Constable?—Yes.

1131. Do you remember martial law; and did you go any where on duty as a constable during martial law?—I remember martial law; I went on Holland Estate as a constable then.

1132. Whom did you go with, and what did you do?—I go with Mr. Brooks, and take up prisoners.

1133. How many prisoners; if you know any names, tell them?—I do not know how many, but I recollect some names; Morris Brooks, James Anderson, Robert Johnson, Tommy Russell, Richard Marryat, Richard Roden Francis, and Lucy Lowe; I do not remember any more.

1134. Did any other constables go with you; if so, tell the names of such as you recollect?—Yes, there were other constables; Bevis Hunter, John Hamilton, Allan Bignall, James Boyd, Richard Byon, James Sproul, and Robert Speed.

1135. Do you know the day of the month this took place?—Twenty-second October last year.

1136. Where did you take up the prisoners, and where did you take them to?—Took them up on Holland Estate, and took them to Golden Grove.

1137. Did you stop on the way to Golden Grove; if so, tell where and what you saw?—I went up to the Iron Bridge, and when we come to the turn to Golden Grove, Mr. Brooks called to come this way, that is the way to Holland Bay; and when we go a little ways we saw three men; Mr. Brooks say, "Look at your three countrymen."

1138. Were the three men dead or alive?—Dead.

1139. How did you see the three men; in what position?—I saw one of them this way (*hands behind and bending body forward*); I see one this way (*leaning the body to the right, and lower than in the first instance*); I see the other one all his brains running out.

1140. What part of the road did you see the three men?—On the right hand going to Holland Bay.

1141. Was there any fence about there, if so, what sort?—Logwood fence this way, and bamboo rail in the midst, as a gate.

1142. You have said one of the three men had his hands behind him; how were his hands?—Tied this way to the fence (*placing his hands behind him*).

1143. What fence?—The bamboo fence; they call it the gate.

1144. How were the hands of the other two men?—Tied the same way to the fence; the three men tied same way; hands aback of them.

1145. Did you know any of these three men; if so, tell which?—I know their names; John M'Call, and Richard Walton, and Tommy Miles.

1146. After you and the prisoners saw the three dead men, what did you do; where did you and your prisoners go?—We marched back to the Iron Bridge to Mr. Manning's shop; were there a little, a few minutes, then come to Golden Grove.

1147. What time of day was it when you were at the Iron Bridge?—Between 10 and 11 o'clock.

1148. When you got to Golden Grove, what did you do with the prisoners?—We carry them into the yard, the Great House yard; Mr. Brooks go upstairs into the Great House, and a little time order us to take them to the Mill House, and deliver them to the soldiers; and we did deliver them to the soldiers.

1149. What sort of soldiers; do you know them at all?—Black soldiers; I do not know them at all.

1150. How long did you remain at Golden Grove

Grove that day?—I cannot remember how long I stop at Golden Grove.

1151. *By Prisoner.*] Did you give evidence at the trial of Ensign Cullen, or is this the first time you have given your evidence on oath?—This is the first time.

1152. When did you first mention this story to any one in St. Thomas-in-the-East; and who questioned you about it?—I never mention it to any body at all in St. Thomas-in-the-East; nobody at all question me there.

1153. Can you read or write; and how do you know it was the 22nd October last year?—I cannot read or write; I hear it the first day we take the prisoners, and I bear it in memory now.

1154. To whom first then did you mention this story, anywhere?—Nowhere at all; never do it; never mention it all.

1155. Were you summoned to come up and give evidence at this court martial; and who gave in your name as a witness?—I was summoned; I do not know who gave my name.

1156. You say you knew the three dead men's names; who told you their names?—I know the man then; my own self.

1157. Did Mr. Brooks speak to any one at the Iron Bridge, and how did he know the three dead men were there; did any one tell him, and if so, who?—He did not speak to any one body at the Iron Bridge; I can't say how he knew, or whether anybody told him. *T. Brown.* 29 Dec. 1866.

1158. Which of the dead men was it that had his brains over his face?—I can't recollect the right one; as I see them I get frightened.

1159. Did Bevis Hunter see the three men the same as you have stated you did?—That I can't say.

1160. *By Prosecutor.*] You say you were summoned to come to town; when did you come to town, and whom did you go to?—I come Monday before last; I went to Mr. Jackson.

1161. Did you tell Mr. Jackson this story?—Yes.

1162. *By Court.*] You said that you never mentioned this story anywhere, never mentioned it at all; and afterwards you say you told Mr. Jackson; can you explain what you really meant by your first answer?—I mean I never tell it but to Mr. Jackson.

[The Witness withdraws.

Thirty-first Witness for Prosecution.

William Bartley, Labourer, residing at Dalvey, being duly sworn, is questioned by the Prosecutor.

1163. *By Prosecutor.*] Do you remember the time of martial law?—Yes. *W. Bartley*

1164. Did you go anywhere at that time to look for anybody?—Yes, I go to look for Richard Walton, Tommy Miles, and John M'Call.

1165. Where did you see them?—I see them at a bamboo fence at the Iron Bridge; they were killed and tied up.

1166. How did they look?—They look so; Walton look so (*bending his body forward*); and one look so (*hanging his body downwards, and to the right*), he had a cut on his head. The other had a chop on the back of his neck, and he was bowing forward too.

1167. What made you go and look for these men?—Because Richard Walton was same as my brother. We come in one ship together from over the sea; we live in one house together, and I miss him.

1168. What did you do with the men?—When I go soon in the morning, I go away again; I go to inquire if I can get any person to help me to go dig a grave and bury them. When I go I can't get nobody. Well, I come back to the Iron Bridge, and meet a lot of people come from Amity Hall; I help them begin and dig a grave. When we dig the grave, I get up and loose the men from the fence, the three of them. When I loose them I put them into the hole; when I put them into the hole I cover them; when I cover them done we go away.

1169. Where did you bury them; what land?—To Duckenfield land, in a grass piece.

1170. How far from the fence you saw the men tied to is the grave you buried them in?—About the half-a-chain.

1171. What day of the week was this?—That day of the week I can't tell. It was a Saturday they kill them, and the Sunday we bury them, in October last year.

1172. What time of the day did you go first to look for the men?—About 5 o'clock, before the sun rise.

1173. How did you put the men into the grave?—I put Richard Walton, the longest man, in the middle, and one on the left and the other on the right (*Witness shows the respective positions of the bodies by placing three pens on the table, by which it appears that he means that Richard Walton was placed with his head above, or higher up than the other two heads*).

1174. *By Prisoner.*] Are you the same person who gave evidence before at the court martial at the trial of Ensign Cullen, and in this room?—Yes.

1175. Can you tell what time of day it was you assisted to bury the men?—I do not know, for I have no watch, but I can guess 1 o'clock, because I see people come from church.

1176. When did you first miss Richard Walton?—I miss him Saturday night.

1177. How deep was the grave you bury the men in?—The grave when we dig it was up to my waist. (*Found on measurement to be* 32 *inches.*)

1178. What made you think of going to the Iron Bridge to look for him; how was it you did not go anywhere else so soon as 5 o'clock in the morning?—When I hear my countrymen kill at the Iron Bridge, I go to see; I can't go anywhere else.

1179. *By Court.*] Did you see many people coming from church; and what church do you mean?—I was at the Iron Bridge. They come from Golden Grove Church. I saw many people. I saw old Cyphus Wills, he come to see the dead bodies; he told me he come from church.

[The Witness withdraws.

Thirty-second Witness for Prosecution.

Assistant Surgeon KERR, 2nd Battalion 6th Regiment, being duly sworn, is Questioned by the Prosecutor.

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1180. *By Prosecutor.*] DID you go to the parish of St. Thomas-in-the-East on duty; when, and what for?—I went to the parish of St. Thomas-in-the-East on special duty, on the 25th September 1866, and to place myself under the orders of Colonel Daniell.

1181. What did you do when you got there?—On the morning of the 26th, Colonel Daniell and I and others proceeded to a field, beyond the Post Office at the Iron Bridge, where we exhumed three skeletons.

1182. How far from the Post Office was the grave out of which you took the skeletons?—I suppose about 300 yards, but I am not certain.

1183. Was Mr. Henry Clarke, of the Royal Engineer Department, present?—He was.

1184. Was there any fence to the field; if so, describe it as near as you can shortly?—There was a fence, but I cannot tell what kind of fence it was.

1185. What description of skeletons did you take up?—Male skeletons.

1186. Will you describe to the Court, as fully and particularly as you can, all your observations of those skeletons made at the time, and after subsequent examination?—The bones were taken out of the grave nearly separately; they were put upon tables close by, and as a number of the small bones were missing, the earth dug up was raked. It was then brought to the side of the grave, and shovelful after shovelful of earth was sprinkled into the grave. I did not observe any holes in the bones at the time. When the different pieces of bones were put together at the engine-house, the injuries to the bones were discovered. At the time of exhumation the bones were covered with moist adipocere, and under one of the bodies was what appeared to be black skin.

1187. What did you see taken out of the grave besides the bones?—Two bowls of pipes; a leather belt, with a buckle on it; a separate buckle; two buttons and a sixpence. There was also a piece of twine.

1188. Did you fit up the skeletons at that time, or when, if afterwards?—They were fitted up as nearly as possible at the side of the grave, but they never were what we, professionally speaking, call fitted up. I subsequently took them out of the boxes, and put them up in the engine-house in these barracks.

1189. Can you from memory, or by referring to any memorandum made by yourself, tell which, if any, bones were missing to make up three perfect male skeletons?—There are missing about 146 bones, small bones of the hands and feet; there is one and a-half hyoid bones, 28 teeth, and three coccyx, or bottom vertebra of the backbone.

1190. Are you certain that the bones which you took out of the boxes and fitted up in the engine-room in these barracks, are the same which you took up in St. Thomas-in-the-East, on the 26th of September last?—I am quite certain that they are the same bones.

1191. You have spoken of injuries to the bones, discovered on after examination, will you describe these injuries particularly?—No. 1 skull is partially broken, portions of the frontal left parietal and temporal bones missing; I found nine pieces of skull which nearly filled up the opening. Above the left parietal eminence there is an oval opening, one inch by half-an-inch; part of this opening is nearly semicircular, and the rest is irregular in form; fissured fractures extend over the top and sides of the skull in different directions; fissures pass through some of the bones of the face; the right-half of oval opening has the external table projecting over the inner table; in the left-half this condition is reversed; above the left ear is an irregular opening which we were unable to fill up with any fragments of bone; its longest diameter is two and a-half inches, shortest, one inch and a-half. No. 3 skull, all the bones of the head were separated from each other, and all broken; many of the bones of the face were either broken or separated from each other; an irregular-shaped opening exists in the left parietal bone; its longest diameter is two inches, its shortest, three-quarters of an inch; the upper part of it is nearly semicircular, lower part irregular; the external table projects over the inner table on the right-half: this condition is reversed in the left-half; the lower jaw is fractured in two; the right ilium of one of the pelves is fractured; three fragments of bone have been fitted to the ilium; a semicircular piece is still wanting to complete the bone; a second pelvis has a small portion of right ilium broken away, two left-shoulder blades are considerably fractured, and pieces wanting; one of the ribs is fractured, and one of the vertebra fractured; these are all the injuries I can remember.

(Witness shows to the Court the ilium to which the pieces have been attached; referred to in the above description of injuries to the bones.

1192. Can you express any opinion as to the cause of any of the injuries of which you have spoken; if so, describe which injury, and your opinion regarding it?—The injuries to the two skulls Nos. 1 and 3, those to two shoulder blades, and that to the pelvis (*all produced in court*), in my opinion are such as might have been caused by bullets. As to the probable cause of injury to the fractured jaw-bone I can give no opinion.

1193. Does your opinion apply to all the injuries of which you have spoken, with the one exception of the fracture of the jaw-bone?—I can give no opinion as to the fractured rib or vertebra.

1194. Then are those the only three exceptions; jaw-bone, rib, and vertebra?—They are.

1195. You have spoken of No. 1, No. 2, and No. 3 skulls; can you with any certainty apportion any of the three skulls to any one set of bones as they lie now in the engine-room?—I could not positively state that any one skull belongs to any one set of bones on the table; I have

have no doubt but that each skull belongs to one of the sets of bones.

1196. What kind of earth were these bodies taken out of?—I suppose clayey earth, it resembles clay more than anything else I know of.

1197. Have you made such a careful examination of those bones, as will, in your own judgment, enable you to express a professional opinion about them; if so, say if you see any reason to think that the bones are not of the same age, that is of any one skeleton?—I believe that there are three complete separate skeletons, with the exceptions I have mentioned.

1198. Did you personally superintend the taking up of the bones; if so, state how it was done; that is, with respect to the amount of care?—I did personally superintend the taking up of all the bones; the men were instructed how and where to dig. I showed them how to dig, and at one time Colonel Daniell and myself were the only diggers.

1199. Have you formed any opinion as to the length of time those bones were buried; if so, tell it to the Court, and give your reasons?—There is nothing surprising in the appearance of the bones to warrant my stating that they had been in the ground longer than 12 months; if I give my reasons, I must assume that those are the three men said to have been shot; setting aside cases of rapid decomposition, everything was in favour of speedy decomposition; in the first place the death was probably sudden, the cavities of the body were open; they were exposed for nearly 24 hours to the open air; the bodies may have been lightly clothed, and the grave was of such a depth, that the bodies would be exposed in a slight degree, to the changes of the weather; and if my opinion that the soil is a clayey one be correct, that would also hasten decomposition.

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1200. Did you see anything by which you could form an opinion of the colour in life of those three men?—From the hair I should suppose they were black men; and if that was skin under one of the bodies of which I have spoken, its outer surface was of a dark colour.

1201. Have you observed any bones which you can with certainty call human bones, among those in the engine-room, in excess of what will make up three human male skeletons?—There are no bones in excess.

1202. Look at the three pieces of something now produced, marked 1, 2, 3, and tell the Court anything you know of them, and particularly when you first saw them?—No. 1 in an envelope marked "ramus", is the anterior superior spinous process of the ilium. Nos. 2 and 3 I cannot give any opinion about. No. 1 I remember distinctly seeing at the end of October or beginning of November. When I first saw Nos. 2 and 3, I cannot positively state.

1203. Of what ilium do you speak, of which you say No. 1 is the anterior superior spinous process?—

Witness produces an ilium, to which he considers the process belongs (this ilium is marked 4, in ink, by the Deputy Judge Advocate).

At 2 p.m. the Court adjourns till 10 a.m. on Monday, the 31st instant.

Fourteenth Day, 31st December 1866.

On Monday 31st December 1866, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as on the 29th instant, and proceeds with the Examination in Chief of Assistant Surgeon Kerr.

1204. *By Prosecutor.*] Was there any difficulty in finding the grave out of which these bodies were taken?—There was no difficulty in finding out the grave.

1205. *By Prisoner.*] Were you examined as a witness on the trial of Ensign Cullen?—I was.

1206. In your evidence on the trial of Ensign Cullen, you stated that the remains you exhumed were not buried deeper than one foot seven inches, are you positive the bodies were not buried deeper?—I am quite positive they were not buried deeper.

1207. When you were examined at the court-martial on the trial of Ensign Cullen, did you not state that you placed everything found in the grave in the boxes, and did you not also state on being recalled by the Court, you found portions of animal matter, part of which were white and greasy; but that the whole mouldered away before it could be put into the box?—I mentioned that I put all the bones and materials found in the grave into the boxes; it was that structure which lay under one of the bodies, which resembled skin that shrivelled up; that was the only thing that mouldered away; that piece that resembled integument.

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1208. In what month, and day of the month, did you make those notes which you read from whilst giving evidence, and did you do so with the assistance of any one and whom, and state who took the measurement you have described?—On 2nd or 3rd November; Dr. Anderson and I took notes in the engine-house at the same time, Dr. Bowerbank being present; Dr. Anderson measured the holes in the skulls, and I saw the measurements, the skulls were between us at the time.

1209. Then those notes were not taken at the time of exhumation?—They were not taken at the time of exhumation.

1210. Did you ever know skin to be recognised as such, after having been buried nine or ten months?—No, I have not.

1211. Did you not on that examination, on the trial of Ensign Cullen, say you found moist adipocere; define it, and state if there is more than one kind?—I did state so; adipocere is ammoniacal soap, supposed to be; it varies in colour and

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and consistency, but I believe there is only one kind.

1212. On your former examination, on the trial of Ensign Cullen, did you not express your opinion that human hair was for years durable after death?—I did.

1213. Can you account for the absence of more clothing and hair, assuming that the bodies you saw exhumed were only buried 12 months?—I cannot.

1214. When you took the remains out of the several boxes, on the 30th October, did you observe if the straw in which they had been kept was soiled, or the inside of the box itself; or did the boxes, or any of them, contain any brown powdery substance like mouldered human remains?—Neither the straw nor the boxes appeared to be soiled; the boxes did not contain any powdery substance resembling human remains.

1215. Supposing that 145 bones of the hands and feet, one rib, one tongue bone, and three "Os Coccyges," were absent, can you account for their disappearance, assuming the bodies you saw exhumed were buried 12 months?—One rib, I may mention, was at one time supposed to have been absent, but three pieces have been found which make up one rib; I cannot account for the absence of the other bones named.

1216. Previous to your giving evidence on the trial of Ensign Cullen, were you aware that there were certain portions of bones supposed, or stated to be over and above that necessary to form three skeletons?—Previous to my giving evidence there were three vertebræ, supposed to be extra, but they were found to be processes of three of the vertebræ lying on the tables; I remember distinctly the discussion about that piece of bone, marked No. 1, about which I gave evidence on Saturday last, and I stated at the time that I did not think it was the remains of the lower jaw.

1217. Are you aware that several medical gentlemen expressed different opinions as to the nature of these three pieces of bones, Nos. 1, 2, 3, and that over and over again attempts were made to fit them to different portions of the skeleton?—I do not think there can be any difference, and I am not aware of any difference of opinion as to the piece of bone marked No. 1; the pieces marked 2 and 3, attempts have been made to fit them over and over again, and there is a difference of opinion about them.

1218. When did you first attach No. 1 piece of bone to the pelvis of No. 2 skeleton, as a portion of the pelvis of No. 2 skeleton, as a portion of the anterior superior spinous process?—Two or three days before my second examination in Ensign Cullen's case.

1219. Looking at the "os innominatum" of pelvis No. 2, and at No. 1 piece of bone, as regards colour, the state of the broken edges, do you think that the jointure you effected is satisfactory; in other words, will you positively swear that No. 1 was the superior spinous process of that ilium?—I have already sworn it was; to the very best of my belief it is the anterior superior spinous process of that ilium; of course I may be mistaken.

1220. Did you ever, that is before you gave evidence on the trial of Ensign Cullen, express an opinion that the three pieces of bones, 1, 2, 3, were not that of a human body, but were bestial?—I never gave such an opinion.

1221. Is it a fact, in surgery, that fracture of the acromion process frequently is not reunited by bone, but by cartilage?—It is a fact.

1222. Can you account for the recent fracture in No. 2 pelvis?—There is no recent fracture in No. 2 pelvis; there is a spicula of bone knocked off.

1223. Look well at the two bones 2 and 3, have they both an articulating facet, or union edge; is such a facet natural to an acromion process for the articulation of the clavicle?—There is an articulating facet to both pieces of bone, 2 and 3; such a facet is natural to an acromion process.

1224. Are the bones Nos. 2 and 3 a pair; have you observed whether the six scapular of the three skeletons all have their acromion processes?—I can't say; they do not look like a pair; the six scapular of the three skeletons have all their acromion processes.

1225. Will you swear that the "superior anterior spinous process" of any of the six ilia bones of the three pelves, on the tables in the engine-room, were wanting on the 31st October?—I can't swear that any of them were wanting on that date.

1226. In your previous evidence on the trial of Ensign Cullen, you stated that the colour and worn edges of No. 1 piece is due to handling; are you still of that opinion, and if so, whose handling?—If I remember rightly, I did not say it was due to handling, but I suppose it might be; there are differences of colour in different parts of the same bone. All the medical men in the engine-room handled it more or less; there were at least seven of us, if not more.

1227. Was the exhumation carefully conducted, and, in your opinion, are the injuries those of recent chops or blows from a pickaxe, or digger, or hoe, spade, or shovel?—The exhumation was carefully performed; I can't imagine that any of the injuries were done by any of the implements named.

1228. Is a brick mould conducive, or the contrary, to the decomposition of a body buried in it?—It is not the driest soil, and naturally more conducive to decomposition than a drier soil.

1229. Do brick moulds vary in composition, as also in their effects on bodies so buried?—I can give no answer to that question.

1230. Are you aware that a convict by the name of Jones was buried at Camp, and are you not aware that his skeleton was exhumed?—I have been informed that a convict was buried in Camp, and I have seen the bones said to be remains of the convict.

1231. Are you acquainted with the soil in which the three bodies at Duckenfield were interred, and also that at Camp in which a convict was buried; can you state if there was any material difference between them?—I am not an authority on soils; I can give no positive opinion as to the nature of soils. The soil at Camp appears to me drier than that at Duckenfield.

1232. What is the extent of your own personal experience of exhumed bodies before the exhumation of the three skeletons now in the engine-room; at how many exhumations had you been present?—I never exhumed bodies before, nor have I ever been present at any other exhumation.

1233. Did you not swear on the trial of Ensign Cullen that the fracture in one of the skulls resembled a hole such as was made by a conical bullet

bullet such as is used by the infantry soldier of the present day?—I did swear that it resembled a bullet wound such as is used by the infantry soldier of the present day.

1234. Did you ever see a man shot through the skull by the present conical bullet, and afterwards examine the skull; I do not refer to injuries inflicted after death?—I have seen injuries caused by the conical bullet to the skull of a living man, and have examined those injuries afterwards.

1235. Then, can you swear that this fracture was inflicted by the present infantry conical bullet during life?—I cannot swear that these injuries were inflicted during life by a conical bullet.

1236. Do you believe that an Enfield rifle fired at a man at 11 paces, during life, could inflict the injuries found on the skulls 1 and 3; and do you think a conical bullet would so completely break up the bones of the skull and face, and tear open the different sutures, taking into consideration your experience and the difference caused by the conoidal and spherical balls?—I do believe that a conical bullet would break up the skull at that distance.

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1237. On the 31st October you expressed an opinion that one skull presented what might have been a gun-shot wound; since then you have seen two of the skulls fixed up; are you still of that opinion?—Yes; I am still of the same opinion as I was on 31st October; I have only seen one skull fitted up since.

1238. Did you see the skull said to be that of a convict that was exhumed at Camp, and did you not see the remains of the brains in it before Dr. Bowerbank and myself?—I did see the skull of the convict; I saw something in the cavity of the skull, but I could not say it was brains.

1239. Did you not see the whole of the clothing of the alleged convict?—I saw parts of the clothing; I can't say I saw the whole.

1240. Did you see the red paint on it?—Yes; I did.

[The Witness withdraws.

Thirty-third Witness for Prosecution.

Alexander Fiddes, Fellow of the Royal College of Surgeons of Edinburgh, practising in Kingston, being duly sworn, is questioned by the Prosecutor.

A. Fiddes.

1241. *By Prosecutor.*] How long have you practised, where, and what public appointments have you held?—I have practised in Kingston since 1843; I was for three years Chief Surgeon to the Kingston Hospital.

1242. Have you examined the skeletons now lying in the engine-room in these barracks; if so, give a description of them?—I have examined those skeletons on several occasions; firstly, on 30th October last; secondly, on 23rd November; thirdly, on 29th November; and, lastly, 29th December, on Saturday last. No. 1 skeleton is that of a fully-grown man, probably of middle age; the skeleton is pretty complete: that is, all the principal bones are present, with the exception of a few of the smaller bones of the hand and foot; the most remarkable appearance in the skeleton is a comminuted fracture of the top and left side of the skull, involving particularly the frontal, the parietal, and the temporal bones; one of the scapulæ or shoulder blades, I think the left, is also broken in its body. With regard to No. 2 skeleton, it is that of a large adult male. The several bones of this skeleton are also tolerably complete, with the exception of the smaller bones of the fingers and toes; the only mark of injury observable in this skeleton is a fracture of the superior anterior spinous process of the right ilium, where a piece of bone, about two inches long, and half an inch broad, has been knocked off. I may mention that there is a considerable enlargement of the shaft of the left thigh bone. In regard to skeleton No. 3, that is evidently that of a young man, probably under 25 years of age. I form that conclusion from the fact that the crest of the ilium has not yet united to the body of the bone by osseous junction, and the head of the humerus is still connected with the body of the bone by cartilaginous structure. The most remarkable feature in that skeleton is an extensive breaking of the bones of the cranium on the left side, and at the base, and also to some extent on the frontal region; the lower jaw-bone is also broken at the chin, and on its right side, near its articulation with the temporal bone. The atlas or first vertebra of the neck is also broken into two pieces; one of the scapulæ is also fractured, as is also the right osilium: I may mention that this skeleton shows a node or elevation on one of the shin bones, showing, probably, that the person had suffered from an old standing ulcerated leg. Those are the principal features I noted in regard to the appearances of the skeletons.

1243. In your examination of these skeletons have you observed any supernumerary bones: that is, bones in excess of what will make up three male human skeletons?—Yes; on my second or third examination, but not on my first, I found there were two pieces of bones, apparently in excess.

1244. Look at the three pieces of something now produced and shown to you, marked No. 1, No. 2, and No. 3; state your opinion of them?—The one marked No. 1 is the anterior superior spinous process of the ilium of the skeleton No. 2; this is not a bone in excess. The pieces of bone marked 2 and 3 have very considerable resemblance to the apex or extremity of the acromion process of the scapula, but they do not form any portion of either of the three skeletons which I have inspected.

1245. Have the pieces Nos. 2 and 3 the precise anatomical characters of the acromium process of the scapula?—They resemble it pretty nearly.

1246. Have you bestowed much attention to the study of morbid anatomy, and have you made many examinations of bodies or bones; if so, state them?—I have been all my life, since the age of 15, engaged in the practical part of my profession, and I believe I have had as much experience in these matters as most men of my age.

1247. Is there any difference, which you can explain to the Court, between the bones Nos. 2 and 3, and the acromium process of the scapula, which you say resemble them pretty nearly?—I think the two bones 2 and 3 are rather more

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pointed than the acromiom process of an adult person usually is; and I also think the two articular facets, which are covered by cartilage, are somewhat nearer to the apex or point than are generally found in a well-formed acromiom process.

1248. Is there any other part of a human skeleton to which those bones may belong, or of which they may be part?—I do not believe that they have the slightest resemblance to any other part of the human skeleton.

1249. Take up No. 1 and show the Court its adaptation to the part to which you say it belongs?—(*Witness affixes the bone as requested, and shows it to the Court.*)

1250. What is your opinion as to the length of time that these bones or bodies have been buried; and is there, in your opinion, any difference as to the length of time they have been under ground?—I cannot state with positive exactitude the length of time those skeletons have been in the ground. I can give an approximative answer to that question only. I may safely say that they have been in the earth for a period not less than six months, and I do not think they have been longer in the earth than 12 months. I see nothing to lead to the inference that any one skeleton has been longer in the earth than the others.

1251. Give the Court your reasons fully for the opinion you have just expressed as to the length of time those bodies have been in the earth?—I fixed the minimum time at six months, because that period of time may be necessary for the thorough decomposition and disappearance of the soft tissues of the human body interred at a superficial depth and without a coffin; and I fixed the maximum time at 12 months, because I think that if these skeletons had been longer under ground than that time, some of the more delicate bones would have shown evidence of disintegration and decay.

1252. You have said that six months may be necessary for the thorough decomposition and disappearance of the soft tissues of a human body, would it be sufficient for that purpose?—Amply sufficient.

1253. What is your authority for that opinion?—My chief authority is my own practical experience; and I might adduce the further evidence of Orfila, the late Professor of Forensic Medicine at Paris, who has written on the subject; I may however add that in temperate climates like that of France, to which Orfila's researches were restricted, the decomposition of animal bodies is not so rapid as it is in tropical countries like Jamaica.

1254. Take up skull No. 1, and explain fully to the Court your opinion as to how the injuries on it occurred?—I think it highly probable that these fractures occurred by the bones having been struck by one or more rifle bullets.

1255. Do the same with skull No. 3?—I think it likewise probable that this skull has been injured in the same way, and by the same means.

1256. Of the injuries which you have enumerated to the several parts of each of the skeletons, tell your opinion how each of such other injuries was caused?—Commencing with skeleton No. 1, I think it very probable that the injury to the scapula was the result of a gun-shot wound; with regard to No. 2, I find I am in error as to the extent of the injury to the ilium; it is somewhat more extensive than what I have described; a piece of bone about four inches long, and one inch and a half wide, has been carried away from its anterior upper surface; of the bone marked No. 4, I think it very probable that this was also caused by a rifle bullet having struck the bone when passing through the belly. As regards No. 3 skeleton, I think it very probable that a bullet striking and fracturing the jaw at its centre, may have passed backwards and broken the atlas or first vertebra at the same time, and may afterwards have passed through and fractured the base of the cranium at the same time; I am disposed to attribute the other injuries to the scapula and osilium to gun-shot wounds also.

1257. Did you notice any cartilaginous surfaces attached to any of the bones?—Yes; there was a cartilaginous union between the epiphysis of the crest of the ilium and the body of the ilium in skeleton N. 3; there was also a cartilaginous formation existing between the head and the neck of the humerus in skeleton No. 3; and I think there was also an appearance of articular cartilage on several of the bones, particularly of the long bones of the lower extremities of all the skeletons.

1258. Did you remark that a thigh bone of skeleton No. 3 had been recently sawn across to show the condition of the interior of that bone?—I did.

1259. What is your opinion of the state of the medullary canal of that bone as shown by the section which has been made, does it evince signs of long interment, or does it indicate that the bone has not been very long buried?—The section distinctly showed that the bone had not been long buried.

1260. *By Prisoner.*] You stated that one skeleton belonged to a man of 25 years of age, because the crest of the ilium was not united; at what age is it admitted in our profession to unite?—I said I think "under" 25 years of age, and it is generally admitted that the union takes place about 25; it is supposed to be complete about that period.

1261. You swore that the head of the humerus is still connected with the body (by which I suppose you mean the shaft) by cartilaginous structure, did you ever know cartilage to remain in a grave for 12 months?—Yes; the cartilage which exists between the epiphysis of a bone and its body, is in a transiture state between true cartilage and fully developed bone, and will resist decomposition for a longer time than cartilage lying over the free surface of a joint.

1262. Do you think a bullet passing through the atlas would simply break it in two pieces, or do you think a bullet would break it all to pieces, and if the atlas was broken by a bullet, do you not think also the odontoid process of the axis would be broken at the same time?—No; I think a bullet might pass through without doing more than break it in two pieces, and that the odontoid process would not necessarily be broken to pieces, because the bullet might strike a little to the right, or a little to the left of that process.

1263. Did you ever exhume a body at six months, if so, when and where; I mean buried without a coffin?—I have exhumed with my own hands in this parish, seven human bodies for scientific purposes, after periods of time ranging from three days to four months; I have never waited so long as six months to exhume any portion of an animal body, because I have always found

found that decomposition was complete at an earlier period than six months; I speak of bodies superficially interred and without coffins.

1264. Have you had any experience in gunshot wounds, and will you state the nature of your experience, I mean practical experience?—I have had very little practical experience of gunshot wounds; I have had a little experience, and I have also observed the effects of gunshot wounds in the anatomical museums in America and Europe; my own experience is chiefly confined to wounds made with a spherical bullet.

1265. What do you term "delicate bones"?—Anything extremely fine; I would name the processes of the palate bone, the pterygoid processes of the sphenoid bone, the nasal bones, the convoluted bones in the chambers of the nostrils and the lachrymal bone of the eye, and the alveolar processes of the upper and lower jaw bones; I may mention those as specimens of what I call the delicate bones of a skeleton.

1266. Did you ever know those bones to decay in 12 months, and have you ever known those bones all to be present when a body has been buried more than 8 or even 15 years?—I think after the lapse of 12 months, these bones I have mentioned commenced to show signs of disintegration and decay; I have no knowledge of bodies exhumed after such a length of time as 8 or 15 years, but I believe that after that time all those bones would be found decayed; that is my belief only, as I have had no practical experience of bodies so long buried.

1267. You say that one skull in your opinion was injured by one or more rifle bullets, which do you mean, one or more?—I put it hypothetically, as having been done by one or more; there are two apertures in this skull, No. 1, and I am not prepared to say the damage was done by one bullet; I would answer as I did before, that it may have been done by one or more, or by one or two bullets.

1268. What, in your opinion, is the effect of a conical ball passing through the ilium, supposing the man to be shot when alive?—The effects of a conical ball striking the ilium would be to pass through the bone, and also to splinter it up much in the same manner that a pane of glass is splintered by a stone thrown against it; that is to say, that an aperture is made, and that several radiating or diverging fractures also occur. *A. Fiddes.* 31 Dec. 1866.

1269. You stated the skull No. 3 belongs to the skeleton of which the atlas is fractured, how can you tell that skull belongs to that atlas?—I have seen no reason to doubt the scientific accuracy of the arrangement of the bones made by Dr. Kerr.

1270. Give me your reasons for stating those injuries you refer to are gunshot injuries; what is the usual mode of determining that point in the medical profession?—I do not see in what other way those injuries could have been effected than by gunshot; they have the splintered character of gunshot wounds, and if I saw those skulls in any museum, without knowing anything of their history, I think I would recognise that the injuries had been effected by projectiles from a rifle.

1271. What was the state of the contents of the medullary canal of the sawn bone?—The contents showed considerable freshness, and had little appearance of decay, such as would be shown by a bone that had been buried for a very long time.

1272. At what time after the burial does articular cartilage disappear?—I am not quite certain on that point; it is the last of the soft structures to disappear, and I should say it would scarcely be removed till after the lapse of a period approximating to a year, a little more or a little less, perhaps, but something about that.

1273. At what period after burial does the hyoid bone decay; also those of the hand and feet?—I cannot fix the period of the decay of the bones of hand and foot, nor of the hyoid bone; the hard bones (the solid bones) will last for a long time, and, if buried deeply, for a very great number of years.

1274. Did you ever know skin to remain 12 months buried, and be recognised as such when dug up after the lapse of that time?—Never; no.

[The Witness withdraws.

Thirty-fourth Witness for Prosecution.

Richard Taylor, Wain-man at Amity Hall, being duly sworn, is questioned by the Prosecutor.

1275. *By Prosecutor.*] Do you remember martial law; where did you live at that time?—Yes, I remember martial law; I lived then at Amity Hall. *R. Taylor.*

1276. Did you go anywhere during martial law for any particular purpose?—Yes, I go to Iron Bridge; I go to bury three men.

1277. Do you know what day was this?—It was a Sunday. I remember it was October last year.

1278. Who went with you; if you know any of their names tell some of them?—There was Natty Wilkie, Charles Robinson, William Huntingdon, and David Thomas.

1279. Tell the Court what you saw, when you went, as you say, to the Iron Bridge, and what did you do?—I saw three men tied upon a fence. I don't know the men. They was dead. We get in and dig a grave at Duckenfield grasspiece, and we carry them in and bury them. They were black men.

1280. What sort of fence did you see them tied to?—It was a logwood fence, with bamboo tied upon. Near the edge of the fence.

1281. Did you see anything particular about these men when you buried them?—I saw one have a leather strap about his waist.

1282. Whereabout is this fence; I mean on what road?—The road to go down to Holland Bay.

1283. How did these three men look when they were tied, as you say, to the fence?—They look as dead men.

1284. Tell the Court how you put these three men in the grave?—We put two side and side, and the other below the other two, foot. (*Witness shows his meaning by placing three pens in the position indicated, the head of the centre body being between the bodies of the other two.*)

1285. What made you go and bury these men?—I meet two soldiers at Amity Hall, at Mr. Cornwall's shop. They were black soldiers. They

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They say must go to Iron Bridge, see three men tied there, must bury them.

1286. What made you say these men looked dead?—When I go to the fence they were dead: was not alive.

1287. How far is the grave from the bamboo fence, to which you saw the three men tied?—About from that wall to that one (*the width of the room*).

1288. Show the Court, as near as you can, how deep you dug the grave, in which you buried these three men?—(*Witness stands up, and points rather higher than his knee.*)

1289. Did you ever go back to this grave again; if so, what did you do?—I go back to dig them up.

1290. When was this, and who was with you?—The doctor was with we. By we, I mean Natty Wilkie, Charles Robinson, Thomas Wedderburn, Zachariah Bayley, and William Huntingdon. I really forget the name of the month.

1291. Were there any gentlemen present beside the doctor?—Yes; Colonel Daniell did come, and several gentlemen more did come, but I did not know their names.

1292. When you dig them up, what did you find?—Find trousers' buttons; find a bit of the strap, and the other man find a sixpence.

1293. How did you find the bodies, I mean in what state?—Them was rotten.

1294. How were they lying in the grave?—Same way as we put them.

1295. How did you know the place to find the grave?—A bastard cedar stump was at the foot of the grave.

1296. Are you certain that the grave you opened, and out of which you took the bodies, was the same grave in which you buried the bodies?—Yes.

1297. *By Prisoner.*] Are you the same person who gave evidence before in this room on the trial of Ensign Cullen?—Yes.

1298. How many Augusts, and how many Christmas' have passed since you say you buried the men?—One August and two Christmas.

1299. Can you read or write?—No.

1300. *By Court.*] To what estate did the men belong who went with you to bury the three men?—To Amity Hall. Only the men from Amity Hall and I go together. I did not observe any other men there.

1301. Tell the names of all the persons whom you observed there besides those you have already given?—John Wright and Harriett Warren; I cannot remember any more.

[The Witness withdraws.

It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, 1st January 1867.

Fifteenth Day, 1st January 1867.

On Tuesday the 1st January 1867, at 10 a.m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday.

Thirty-fifth Witness for Prosecution.

James Scott, Member of the Royal College of Surgeons of England, and practising in Kingston, being duly sworn, is questioned by the Prosecutor.

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1302. *By Prosecutor.*] How long have you been in the practice of your profession, and have you held any public appointment, if so, state what and for how long?—I have been in practice for a period of nearly 28 years; and for 18 years was one of the Surgeons of the Kingston Hospital.

1303. Have you had practical experience of the exhumation of human bodies, and can you speak of your own knowledge as to the length of time animal bodies require for complete decomposition?—I have had considerable experience in the interment and exhumation of bodies, and also of portions of bodies; the length of time required for complete decomposition, will be determined by the circumstances under which a body may have been placed.

1304. What are the circumstances or conditions which accelerate or retard the progess of decomposition in animal bodies, when buried in the earth?—If the body be coffined and placed at a considerable depth below the surface, decomposition goes on more slowly, whilst if it be placed in the grave uncoffined, especially if at no considerable depth below the surface, then the progress of decomposition will be very rapid; and this will be influenced again by the nature of the soil in which the body has been placed.

1305. Have you examined the skeletons now lying in the engine-room in these barracks; if so, give a general description of them, describing them as Nos. 1, 2, and 3?—I have examined three skeletons lying in a room in the square of these barracks; I did so first on 30th October last year, and I again examined them on the 23rd and 29th November; and yesterday I made a final examination of them. The three skeletons are those of male persons, and the bones of each of them have been more or less fractured. No. 3 skeleton, which I take to be the middle one, lying between the other two, is that of a comparatively young person; the skull of that skeleton has been severely fractured; I may almost say smashed into pieces; the right ilium portion of the pelvis or haunch bone is also fractured; the left scapula or shoulder blade, the lower jaw, and the atlas or first bone of the neck, are also all fractured. In No. 1 skeleton, the skull and left scapula are the parts I noticed as having been fractured particularly. The right ilium of No. 2 skeleton has also been fractured; there are some smaller

smaller fractures of the ribs and other bones; but I did not take those down very accurately. Several of the smaller bones are missing of those skeletons, chiefly the bones of the hands and feet.

1306. Except the smaller bones of which you have spoken, and the fractures, are the skeletons otherwise complete?—I consider them to be so.

1307. What is your opinion as to the length of time that these bodies have been buried, and do you think that they have all been put under ground at one time?—I have not ascertained in what manner the bodies of those particular skeletons were buried, and I cannot therefore answer the question, unless I obtain the necessary information. I most certainly think they were put under ground at the same time, so far as appearances go.

1308. In view of the climate of this country, how long a period of time would it require for a body to become as decomposed as you saw those bodies, if it were buried between 19 and 30 inches under ground uncoffined, and in a damp soil?—I should say, from my experience, that at the expiration of three or four months there would be such a complete decomposition of the soft parts, as to enable one to remove the bones in an unattached state, and within that period and 12 months, such a complete destruction of those soft parts would have taken place, as to determine a condition perfectly analagous to that in which I found those skeletons.

1309. What is your opinion as to the cause of the fractures to the several bones and skulls which you have described?—Fractures of the skull, and other parts of the body, may arise from various causes; I may inform the Court that the mode in which those injuries were caused has not been stated to me.

1310. Have you any experience of gun-shot wounds?—I have had to deal with cases of gun-shot wounds, but not with those of rifle bullets.

1311. In your examination of these skeletons, have you observed any supernumerary bones, that is, bones in addition to the ordinary numbers?—On the 23rd November, when I examined the skeletons, three bones were placed in my hand by Dr. Kerr as supernumerary bones; they were said to be supernumerary.

1312. Look at the bones produced to you, marked Nos. 1, 2, and 3, and say if they are the same you allude to as having been shown to you by Dr. Kerr?—These are the same bones that were shown to me by Dr. Kerr.

1313. What is that marked No. 1?—That is what is termed the anterior superior spinous process of the ilium, or haunch bone; I discovered that as soon as it was placed in my hands.

The ilium marked No. 4 being handed to the Witness, he at first declared that that was not the bone to which the fractured portion marked No. 1 belongs, but on further examination he finds that it does belong to that bone, and accordingly placed it in its position, and showed to the Court that it has been fractured from the ilium.

Before the further examination alluded to above was made, the remaining pelves were brought into Court, and after seeing that they were not fractured, the Witness made a closer examination of ilium No. 4, and then discovered his error.

1314. What are those marked No. 2 and No. 3?—I have not been able to make out to what bones these belong; in certain respects they resemble acromion processes of the scapulæ, but I cannot satisfy my mind that they actually belong to those bones.

1315. Did you at any time before affix that piece of bone, No. 1, to the same ilium to which you have now affixed it, namely, the ilium marked No. 4?—I may state to the Court that it was I who discovered that that piece of bone was a portion of the ilium; it was affixed in the presence of Dr. Kerr, and shown to him, and he at once concurred with me that it was part of the ilium.

1316. Would the bones of a person dying of cholera present any different appearance to the bones of a person who died, not having that disorder?—I see no reason for imagining that there would be any difference so far as the bones are concerned.

1317. *By Prisoner.*] Many of the small bones of the hands and feet being absent, how do you account for the fact that other similar bones are now in the engine-room; do you think they have decayed, or do you think they have not been produced through carelessness in the exhumation, or to what do you attribute their absence, bearing in mind that it has been stated on oath, by Dr. Kerr, that he removed all the bones and materials found in the graves?—It not unfrefrequently happens that, in the exhumation of bodies, these small bones become mixed with the earth, such bodies not having been interred in coffins, and in that way escape observation.

1318. Did you believe that bones Nos. 2 and 3 belonged to any of the three skeletons, and if not, what are they; are they human or bestial; do they not most resemble human acromion processes?—I have already stated that, to a certain extent, they resemble human acromion processes; I cannot make out that they belong to any of the three skeletons. The extent of my knowledge of comparative anatomy does not enable me to answer that part of the question relative to the bones of the lower animals.

1319. How would you describe those pieces of bones, Nos. 2 and 3, as an anatomist; describe them minutely; also describe an acromion process strictly anatomically, and state in what respect these pieces of bone differ?—

Before the Witness replied to this question the Court is cleared for deliberation.

The Court being re-opened, the President informs the prisoner that the Court desires that he should explain the relevancy of the question.

The Witness having already stated that though these bones to a certain extent re-resemble human acromion processes, yet, that he cannot make out that they belong to the three skeletons.

The Court therefore requests some explanation as to the bearing of an abstract question on anatomy, so as to enable them to follow the course of the cross-examination.

The Prisoner explains that his object is to obtain

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obtain from the Witness an explanation as to the points of difference between these bones and human acromion processes; and he is of opinion that this can be done only by a question of this nature.

The Witness is therefore requested to reply to the question as briefly as possible, consistently with clearness of statement.

The portions of bone marked 2 and 3 are flat in their character, of somewhat triangular shape, apparently perfectly symmetrical, having on their corresponding inner surfaces two facets, or articular surfaces, extending as high up as what might be called the apex of the triangle. The acromion process of a human scapula is also a flat bone, but more expanded, much wider, and larger than these two portions of bone, and somewhat more concave on their under surfaces, the outer edges irregular, and somewhat thinned. On its inner surface it has the same facet or articular surface, where it articulates with the outer extremity of the clavicle or collar bone. These surfaces in the human acromion process are generally speaking nearly half an inch from the point or extremity of the process. I know of no particular remark that I can make further in regard to these bones.

1320. What was your opinion of the age of these skeletons when you first saw them, and have you not expressed an opinion that they were of a considerable age; by age I mean length of interment?—When I inspected those skeletons on 30th October, and heard certain particulars in regard to them, I expressed an opinion that they could not have been interred beyond 12 months,

1321. Did you see No. 1 piece of bone before it was adapted to the ilium, and what was your opinion then as to its nature?—I saw it for the first time on 23rd of November; it was placed in my hand by Dr. Kerr; it at once struck me it belonged to an ilium; he handed me one, and I adapted it at once.

1322. Do you think that the colour of No. 1 fragment of bone was produced by handling, or if not, how do you account for it?—It is not improbable that that colour was determined by its proximity in the grave to some decomposing matter; it was detached by fracture from the ilium.

1323. You state that you at once formed an opinion that it belonged to an ilium, if so, state why you did; describe minutely, as an anatomist, the portion of the ilium you concluded it was, and how would you recognize it from any other piece of bone?—From my knowledge of anatomy, and having for a series of years been engaged in giving instructions to students in anatomy, I have become familiarised with the bones of the human subject, and had no difficulty in perceiving that that piece of bone was the anterior superior spinous process of the ilium; I know of no other piece of bone like it; had I known of such I would have called for it instead of the ilium.

1324. How do you account for the very small quantity of hair as belonging to these three men?—I imagine that the bodies having been buried in the earth uncoffined, that it has become mixed with the earth, and thus escaped observation.

1325. How long does hair of a body interred remain undecayed?—For a very considerable period of time; for many years.

1326. Can you state positively that the bones lying in the engine-room belong to three skeletons; has each bone been so carefully adapted to those with which it should articulate that as an anatomist you can give a decided opinion on this point?—During my examination of the three skeletons I never had any reason for thinking otherwise than that each skeleton was perfect; and on three different occasions I examined them carefully with Dr. Kerr.

1327. What kind of soils hastens or retards decomposition; have you had any practical experience on the subject of bodies buried without a coffin; be particular as regards the word "without;" if so, when and where, and how long were they buried?—I stated to the Court that I had frequently interred and exhumed portions of bodies; in those cases I had always observed that where the soil was clayey and moist, and mixed with decayed vegetable matter, decomposition progressed most rapidly; the interment of such limbs or portions of the body being at a depth of from 18 to 24 inches below the surface, but wherever the ground was dry, sandy, or gravelly, and of an absorbent character, decomposition did not proceed at the same rate, I make this statement as the result of my own observations; I have been present at the exhumation of one body only in this country without a coffin, but that body had only been interred a few weeks. The limbs, and portions I have spoken of, were without coffins.

1328. How many weeks?—About three weeks; I should think between two and three weeks; but it was many years ago; on the north side of the island; the body had only been covered with clothes in a grave, and I was present when it was raised, placed in a coffin, and re-interred.

1329. Are the bones 2 and 3 a pair; have you observed whether the six scapulæ of the three skeletons all have their acromion processes?—These bones 2 and 3, seem to be a pair; two scapulæ belonging to Nos. 2 and 3 skeletons, have the extremities of their acromion processes broken off, but these two do not appear to belong to them; I could not safely say they belong to them, I would not venture to swear to it, because there is not perfect adaptation.

1330. Look well at the bones 2 and 3; have they both an articulating facet or union edge; is such a facet natural to an acromion process for the articulation of the clavicle; if so, with what does it articulate?—I have stated in reply to a former question, that every acromion process has a facet or articulating surface on its inner aspect, to articulate with the clavicle or collar bone; each of these bones 2 and 3, has a facet; I have already stated so.

1331. Do you believe that the clothing of these men could, by interment of 11 months and four days, so disappear as to leave only a fragment of an inch square attached to a rib?—Much would depend on the description of clothing which the men wore at the time.

1332. Have you any other degree than that of Member of the Royal College of Surgeons, England?—No.

[The Witness withdraws.

Thirty-sixth Witness for Prosecution.

HENRY CLARKE, Clerk of Works in the Royal Engineer Department, being duly sworn, is questioned by the Prosecutor.

H. Clarke.

1 January 1867.

1333. *By Prosecutor.*] DID you go on duty to St. Thomas-in-the-East at any time; if so, say when and with whom?—With Dr. Kerr, on the 26th October last year.

1334. What did Dr. Kerr do, that you saw?—He got some labourers and opened a grave in the Duckenfield grass-piece, and was there all day looking after the taking up of three skeletons.

1335. Did you ever go at any other time than the 26th of October?—No; except with the members of this Court.

1336. When was that, as near as you can remember?—About the 1st or 2nd November, I think; it was a few days after I had previously been there. I recollect it was four or five days after I had been there.

1337. Try and test your memory, and say whether it was October or November that you went with the Court to St. Thomas-in-the-East?—I cannot recollect exactly as to days of the week; but it was, I believe, about the end of October or beginning of November.

1338. Did you ever give evidence before a court martial at Up Park Camp; if so, state when; state what day the Court first met, if you recollect?—I do not recollect the exact date; I recollect giving evidence, but not the day of the month.

1339. Do you know the Plantain Garden River Post Office?—Yes.

1340. Did you measure the distance from the Plantain Garden River Post Office to the place from which the bodies were exhumed by Dr. Kerr?—Yes; it is about 80 yards, as near as I can recollect.

1341. Were any other gentlemen present with you and Dr. Kerr?—Colonel Daniell was there, and Mr. Jackson in the evening. Mr. Chisholm, overseer of Golden Grove Estate, came there too.

1342. Do you remember when the members of this Court came to Jamaica?—I imagine it was 21st October, roughly guessing by the mail; but I would not be certain.

1343. *By Prisoner.*] As being in the Engineer Department, do you know the nature of soils, you being present at the exhumation of these three skeletons; do you think those bodies would be denuded of clothing in 11 months, that is judging from the nature of that soil from which you saw exhumed those bodies?—The chemical constituents of the soil would be the thing to find out; I could make no analysis of that; the soil appeared to me to be alluvial deposit, but it may have contained strong decomposing agents, or anything, as far as I know.

[The Witness withdraws.

Thirty-seventh Witness for Prosecution.

RICHARD RODEN FRANCIS, Labourer, residing on Holland Estate, being duly sworn, is questioned by the Prosecutor.

R. R. Francis.

1344. *By Prosecutor.*] DO you remember martial law?—Yes.

1345. Were you ever taken prisoner during martial law, and if so, tell by whom?—Yes, by Mr. Brooks, himself alone of the volunteers. There were Constables James Boyd, Allan Bignall, James Sproul, Richard Byon, Thomas Brown, Bevis Hunter, Johnny Hamilton; that is all.

1346. Where were you taken from and to?—Taken from Holland to Golden Grove.

1347. Did you stop anywhere before you got to Golden Grove; if so, tell where, and what you saw?—Yes, I stop at the Iron Bridge; I see three men shot.

1348. Where did you see the three men, and did you know any of them?—I only know one, Richard Walton; I saw them at the rail by the logwood corner.

1349. On what road?—The road Holland Bay way.

1350. Were they alive or dead; what sort of rail do you mean?—They were dead; a bamboo rail.

1351. What was done to you when you got to Golden Grove?—Flog me. When I first get to Golden Grove they put me in the mill-house; the mill-house is where they grind the cane at Golden Grove.

1352. What day was this that you saw the three men at the bamboo rail, dead?—Sunday day, 22nd October; I do not know what year.

1353. *By Prisoner.*] Did you give evidence at the trial of Ensign Cullen, or is this the first time you have given your evidence?—This is the first time I have kissed the book about this.

1354. Did you ever mention what you have stated to-day to any one before to-day; and to whom first did you mention it, and where?—I tell Colonel Daniell first in Kingston.

1355. Before you came to Kingston to Colonel Daniell, to whom did you mention it, in St. Thomas-in-the-East?—None at all.

1356. What made you say it was Sunday day, 22nd October, and yet you say you don't remember the year?—I remember it from the day, the year I don't remember at all.

1357. When was the first day you told Colonel Daniell, and what made you come up to him?—Monday gone—yesterday—I got a summons to come up.

1358. Can you read and write; and what day of the month was the Sunday before the 22nd October?—I can't read and write; I don't remember what that Sunday was.

1359. Who gave in your name to Colonel Daniell, and who examined you in St. Thomas-in-the-East, and then sent your name to Colonel Daniell?—I do not know who sent my name to Colonel Daniell. Nobody examine me in St. Thomas-in-the-East.

[The Witness withdraws.

Thirty-eighth Witness for Prosecution.

James Sproul, Cabinet-maker, residing on Holland Estate, being duly sworn, is questioned by the Prosecutor.

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1360. *By Prosecutor.*] Do you remember martial law, and did you do duty as a constable during that time; if so, state when, and what you did?—I remember martial law. I did duty as a constable during that time. I commenced duty on the 16th October 1865; and on the 22nd Mr. Brooks, the volunteer, rode into Holland; and Speed, a constable, at Holland Bay; order us to took up prisoners, to take them to Golden Grove.

1361. Did you take up the prisoners; if so, state what other constables were with you, and if you went to Golden Grove with the prisoners?—Yes, I did take up the prisoners; there were John Hamilton, Bevis Hunter, James Boyd, Allan Bignail, and Richard Byon, constables. I went to Golden Grove with the prisoners.

1362. Did you stop on the way to Golden Grove, and did you see anything, and what made you stop?—When I got on the Iron Bridge, Mr. Brooks, the volunteer, order us to turn down the prisoners, to see the dead bodies, and we went down to the spot and saw three dead bodies. The spot was the Duckenfield grass-piece fence. It was a bamboo fence on the Holland Bay-road.

1363. What sort of bodies were they; did you know any of them?—They were three men—black men—only one I know, Richard Walton.

1364. Describe as well as you can how these bodies looked?—I saw the three of them, heads this way, down to the ground (*bending forward*); Richard Walton I saw with a piece of the flesh hanging over the face. Mr. Brooks then order us to go on to Golden Grove, and we went.

1365. What time of the day, as near as you can remember, was it that you got to the Iron Bridge?—As far as I can remember, it was betwixt 10 and 11 o'clock, but I can't be certain.

1366. Did you alone go to see the dead bodies of these three men?—No; I and the prisoners, and the rest of the constables.

1367. Did you take the prisoners on to Golden Grove; and what did you do with them when you got there?—I took them on to Golden Grove, and hand them over to the black soldiers.

1368. *By Prisoner.*] Is this the first time you have been examined on oath as a witness in respect to what you have stated to-day, and to whom first did you make the statements you have made to-day, and when and where?—To-day is the first time on oath. I made the statements first to Colonel Daniell yesterday, at his lodgings.

1369. When last did you see Mr. Brooks?—From the 22nd October 1865, I have not seen him up till now, this present minute.

1370. What time of the day did you leave Golden Grove on 22nd October 1865?—About two o'clock.

1371. *By Court.*] When you left Golden Grove where did you go?—I went direct to Holland Estate, over the Iron Bridge.

1372. On arriving at the Iron Bridge, did you go on to the bamboo fence, where you had seen three dead bodies tied?—I did not go back.

1373. Can you remember if you saw any white officers or soldiers at Golden Grove on that Sunday; if so, state who they were, if you know them?—Only Ensign Cullen, who gave me a written pass. I saw many white soldiers, but no officer except Ensign Cullen.

[The Witness withdraws.

Thirty-ninth Witness for Prosecution.

Allan Bignall, Schoolmaster and Tailor, on Holland Estate, being duly sworn, is questioned by the Prosecutor.

A. Bignall.

1374. *By Prosecutor.*] Do you remember martial law, and if so, were you ever employed as a constable during that time?—I remember martial law; I was employed then as a constable.

1375. Did you do any duty in going with prisoners; if so, state when and where to.—On Sunday morning, 22nd October 1865, I was at Holland, and saw Mr. Brooks ride into Holland from Golden Grove, and order us as constables to apprehend certain persons as prisoners. They were apprehended by us, and tied two by two, by order of Mr. Brooks, to take over to Golden Grove. On our way to Golden Grove, as soon as we got to the road which leads to Holland Bay, he ordered us to march the prisoners on that road—that is, the Holland Bay-road—to take an inspection of three dead men. We went, and, after having an inspection, he ordered us to march the prisoners on to Golden Grove. The prisoners were taken to Golden Grove Great House-yard, and from there conveyed over to the mill-house by black soldiers. I then left, and knew nothing more about them.

1376. What road did you take in going from Holland to Golden Grove?—It is the road which leads through the Holland works direct to the Iron Bridge.

1377. Did you go over the Iron Bridge—tell how far, as near as you can judge, down the road it was that you saw the three dead bodies?—I went over the Iron Bridge; to the best of my calculation, I think it is about fifty yards down to the road.

1378. You say Mr. Brooks ordered "us"; whom do you mean by us?—Myself and other constables; there names are, John Hamilton, Thomas Brown, Bevis Hunter, James Sproul, James Boyd, Richard Byon, Robert Speed, and myself.

1379. In what position, and where did you see the dead bodies?—I saw their hands tied aback of them upon a bamboo rail on the Duckenfield grass-piece fence.

1380. How did they look?—I observed the forehead of one of the men was projecting about three or four inches out; and another, the second one to him, one of his eyes was partly out, and their faces were stained with blood.

1381. Did you know any of these three dead men?

men?—No, I did not know them; they were black men.

1382. When you got to Golden Grove, did you see any officers?—Yes; I do not know how many, and I do not know any of them.

1383. What time of day, as near as you can judge, did you get to the Iron Bridge?—I should think it was between 10 and 11 o'clock.

1384. *By Prisoner.*] Did you give evidence on the trial of Ensign Cullen, or is this the first time you have given evidence on oath?—This is the first time.

1385. When first did you mention the statements you have made to-day, and to whom and where?—I never make mention of this statement before yesterday; I mentioned it then to Colonel Daniell at his residence.

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1386. What time of the day did you leave Golden Grove on the Sunday you say you took the prisoners?—I think it was about two o'clock, or after.

1387. As a schoolmaster, I presume you can read and write?—Yes.

1388. Do you know a white officer from a white soldier?—Yes.

[The Witness withdraws.

The Prosecutor here intimates that he has in attendance five more witnesses whose evidence he considers unnecessary, as they merely corroborate statements already made; but he offers them for cross-examination if desired. Their names are Charles Robinson, Natty Wilkie, James Boyd, Richard Byon, and James Theodore Anderson; the first two speak to the alleged burial of the three bodies; and the other three to the alleged seeing of the dead bodies tied to the bamboo rail on Sunday morning, the 22nd October 1865.

The Prisoner declines cross-examination of these five witnesses.

The Prosecution closes.

The Deputy Judge Advocate here inquires of the Prisoner if he intends to adduce evidence. The latter replies in the affirmative, and craves the indulgence of the Court to grant him till Monday next, the 7th instant, to prepare his opening address and collect his witnesses, many of whom cannot be in Kingston before that time, not having been yet summoned, owing to his not being aware when the prosecution would terminate.

The court is cleared for the purpose of deliberating on the prisoner's request for an adjournment; and being re-opened, the President inquires of the Prisoner whether he cannot do with a shorter period of adjournment than that asked for, which the Court considers, under the circumstances, rather too long, as many of the witnesses for the defence are resident in this town, and their attendance therefore can readily be obtained.

The Prisoner respectfully urges his request, and the Court therefore grants his application; and at 3.40 p.m. adjourns till 10 a.m. 7th instant.

Sixteenth Day, 7th January 1867.

On Monday, the 7th of January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the whole of the Members.

Defence.

The Prisoner enters on his Defence, reads, with the Court's permission, an opening address which is marked (H.), signed in the usual manner and attached to the Proceedings, and then proceeds to call evidence.

First Witness for Defence.

Frances Thompson, residing at Stokes Hall, St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

1389. *By Prisoner.*] Do you know Mr. Brooks, the volunteer, a white man; did you attend him during martial law at Golden Grove; and who employed you?—I know Mr. Brooks; I attended him during martial law; Mr. Wilson employed me; Mr. Wilson is book-keeper at Golden Grove.

1390. Who was the overseer there?—Mr. Chisholm.

1391. Do you remember the day during martial law that you were first brought from Stokes Hall to Golden Grove, and employed by Mr. Wilson to attend Mr. Brooks?—Yes, it was on a Saturday; it is so long I really have forgotten the day of the month.

1392. How did you come from Stokes Hall to Golden Grove on that Saturday; was there a cart, and who was in it?—I was took by the volunteers down to Golden Grove on that Saturday; I walked; there was a cart and lots of all the book-keepers coming in it from Morant Bay. Mr. Wilson was one in the cart; Mr. Low, book-keeper at Golden Grove; Mr. Earle, the Hill House book-keeper at Golden Grove; Mr. Stewart, overseer at Holland at that time; another Mr. Wilson, book-keeper at Duckenfield; Mr. Jones, book-keeper at Winchester; Mr. Hill, book-keeper at Winchester; Mr. Frank M'Dermott, head overseer at Plantain Garden River; all these were in the cart; and there was

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Mr. Davis who is gone to Honduras, and is not here; and Mr. Mais, book-keeper at Golden Grove, was in the cart too.

1393. From what direction were the volunteers coming towards Stokes Hall and going to Golden Grove, that Saturday?—They came from Morant Bay, straight from Morant Bay.

1394. Do you know Mr. Sinclair, the overseer of Duckenfield; did you see him on that same Saturday on the road to Golden Grove?—Yes, I know him; he came with the cart riding.

1395. How was Mr. Brooks that same Saturday when you first saw him; was he put in the cart, or did he try to get there on the road to Golden Grove that Saturday?—When he came to Stokes Hall he was into the cart; I mean when the cart came to Stokes Hall, he was in the cart.

1396. How was Mr. Brooks that Saturday when he got to Golden Grove; was he well or sick, and what became of him that day; what was done for him, and by whom?—He was not well; he was sick; he was in the book-keepers' barracks that day after he came in. On Saturday night I gave him tea, because he had fever and ague.

1397. In whose room in the barracks was he put that Saturday night, and who attended him?—He was in Mr. Chisholm's room; I attended him.

1398. Did any medical man come to see Brooks that Saturday night, and who was he?—On Sunday night Dr. Alvarenga come to see him; nobody send for a doctor on Saturday night, Dr. Alvarenga had to give him an injection that Sunday night, and had to get hot bricks and hot water for his bowels; he had to give him medicine that Sunday night.

1399. Did you see Mr. Brooks on the Sunday morning in bed, at what time first, and afterwards; how was he then?—I saw him in bed on Sunday morning at 6 o'clock; I went back again at 7 o'clock, and gave him some tea. He had the fever then, and he told me that day he was very bad.

1400. How long was Mr. Brooks sick from that Saturday when you first attended him; state the days, each day by itself?—He was sick Sunday, Monday, Tuesday; and Wednesday he say he felt a little better, and he went over to the Great House for some clean clothes, and he came back and he had fever again, and from that he never was out till the next Monday. On that Monday they gave orders to all the book-keepers to return to their estates, and he went over to Holland Bay; and on Tuesday he was on his way to Kingston, for he passed Stokes Hall and bid me good-bye, and told me he did not expect to come back again, for he expect his discharge.

1401. While you were attending Mr. Brooks in the barracks on the Sunday, did he go out at all from Golden Grove that day; where did he remain all that Sunday?—I never missed him at all that Sunday; he remain in the barracks in his bed.

1402. When you came in from Stokes Hall with the volunteers on that Saturday, did you see any black soldier or corporal at GoldenGrove; and if so, where was he on your arrival?—Corporal Hunter was the only soldier that I saw; he was over at the Big Barracks.

1403. *By Prosecutor.*] What made the volunteers take you from Stokes Hall to Golden Grove?—To go and provide anything for them; to see their meals get.

1404. How far is Stokes Hall from Golden Grove?—A mile, I think.

1405. What is your occupation at Stokes Hall?—Washer woman.

1406. Did all the persons whose names you have given as having come to Stokes Hall in the cart, go to Golden Grove in the cart?—Yes.

1407. Whose clothes are you in the habit of washing?—I wash for any one, no one in particular.

1408. Was Mr. Brooks sick when he came to Stokes Hall, or did he take sick afterwards?—He was in the cart and he was sick, but not as bad as Sunday; Sunday he was worse.

1409. You have said you put Mr. Brooks in Mr. Chisholm's room; does Mr. Chisholm keep a room in the barracks?—Yes, his own apartment in the barracks.

1410. When first in your life did you see Corporal Hunter?—I never saw him till that Saturday.

1411. What time of day did you first get to Golden Grove on the Saturday?—I think it was 2 o'clock.

1412. Did you remain at Golden Grove all that Sunday?—Yes.

1413. Did any of the people who went in the cart have horses with them?—Yes.

1414. Do you remember martial law, if so tell how soon after it it was that you attended Mr. Brooks?—I remember martial law; it was the next week; I attended Mr. Brooks; the first week the gentlemen all went to Kingston, and I think it was the third week they come back, because they were away a week. The martial law began on Thursday, and on Saturday the soldiers came and took away the gentlemen, and the next Saturday they returned.

1415. How soon after martial law began was it that you attended Mr. Brooks?—Martial law began on a Thursday and the soldiers took the gentlemen away on Saturday, and then they came back the next Saturday, and Mr. Brooks sick that day.

1416. Were there any soldiers at Golden Grove on the Sunday; if so, tell what sort?—I don't remember seeing any soldiers on Sunday, not black soldiers, but the white soldiers were at the barracks.

1417. Did you see any soldiers come to Golden Grove on the Saturday?—No, I did not, for I was not there in the morning till I came with the volunteers; and then Hunter was the only soldier I saw.

1418. Where did the white soldiers who were at the barracks on the Sunday come from; tell if you know?—I do not know.

1419. Did you see any prisoners brought to Golden Grove on the Sunday?—No, I never was out of the book-keepers' barracks all the Sunday. I did not see any at all till the Monday.

1420. Do you mean to say that you remained inside the book-keepers' barracks, the whole day, Sunday?—Yes, for I was looking after getting them things to eat, and I did not go out.

1421. Was any one else who was in the cart sick, or get sick at the same time as Mr. Brooks?—Mr. Mais was a little unwell in the cart, till he came to the barracks, when he was worse; Mr. Davis was a little unwell at Golden Grove at that same time and Mr. Low, when I went away to Stokes Hall. Mr. Low and Mr. Mais were left sick in the barracks.

[The Witness withdraws.

Second Witness for Defence.

ALFRED ALVARENGA, Druggist, residing at Golden Grove, is sworn.

The Witness appearing from some cause to be in a state unfit to give evidence, is directed to withdraw.

The Court is cleared for deliberation, and being re-opened, the Prisoner is requested to substitute another Witness in place of the person just sworn.

Third Witness for Defence.

JOHN MAIS, Overseer at Mullet Hall, St. Andrew's Parish, being duly sworn, is questioned by the Prisoner.

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1422. *By Prisoner.*] Do you know Mr. Brooks, late a book-keeper, at Golden Grove; a volunteer during martial law?—I do.

1423. Did you come with him and others from Morant Bay, past Stokes Hall to Golden Grove, during martial law?—I did on the 21st.

1424. Mention some of the names of those who were with you and him on the 21st, on that march?—Captain Adcock, Frank M'Dermott, Wilson—I do not recollect his Christian name, but he was book-keeper at Duckenfield at that time, and David Ford.

1425. Did you see a cart used on that march; do you know Francis Thompson, from Stokes Hall?—I did see a cart used; I do not know a person of that name.

1426. When you arrived at Golden Grove on that same day, was anything the matter with Mr. Brooks; what became of him that same day; was he well or sick?—He was sick when we arrived at Golden Grove; he stopped in barracks complaining.

1427. Do you know who was attending him on that same day, or on the next day, at the barracks?—Dr. Alvarenga came up on Saturday along with us, and he attended Mr. Brooks on Sunday.

1428. Were you a book-keeper at Golden Grove during martial law, or did you only go to St. Thomas-in-the-East on volunteer service?—I was a book-keeper at Golden Grove.

1429. How do you know Mr. Brooks was sick then at Golden Grove? Where did you see him sick?—When he was first coming up with us on the Saturday he was sick and was obliged to sit in one of the carts; that was on the march from Morant Bay to Golden Grove.

1430. Did you see Mr. Brooks on the Sunday; how was he then, well or sick? Did you see him with any prisoners at all on that Sunday; did he leave Golden Grove that day at all?—I did see him on the Sunday, the day after we came in; he was sick. I did not see him with any prisoners on that Sunday; he did not leave Golden Grove that day, to my knowledge.

1431. Do you know Mr. Brooks' handwriting well?—I do.

1432. Look at this book, and state whether the writing in pencil on two pages is his, to the best of your belief—one page with no printing on it, and one page with printed words on it?

Before this question was read out to the witness, the court is cleared for deliberation. On being re-opened, the prisoner is asked for an explanation as to his reasons for not having cross-examined Mr. Brooks respecting this book when he was before the Court; and further, the Court desires that he will give his reasons for claiming to put in a book to discredit a witness, with regard to which that witness has not been asked any questions.

The prisoner hands in the following explanation:—

The book was not obtained, and was not known of till after Brooks had been examined; it was not shown to any one on my behalf till this Monday week last, when it was discovered at Golden Grove Barracks in the possession of Wilson and McKie, book-keepers and intended witnesses, and by them, or one of them, handed over to my professional friend through another witness of the name of Cox. The prosecutor would have every proper right of recalling Brooks in rebutter to explain it, and anything material for the prosecution.

The question and book being shown to the prosecutor, he states that he offers no objection to the former being answered, provided it be understood that he may recall Mr. Brooks if he considers it necessary to do so on this point—

The question is, therefore, read to the witness, and he is directed to reply to it.

—Yes; the writing throughout on both pages, to the best of my belief, is Mr. Brooks', including the signature on the second page.

The book in question is a Letts' Diary, No. 12, 1844, and the writing in pencil is on the first blank page, and on the reverse of that page being January 1st, 2nd, and 3rd.

At the prisoner's request, the writing in pencil on these two pages is read out in court by the Deputy Judge Advocate.

1433. *By Prosecutor.*] Who is the owner and attorney of Mullet Hall?—Mrs. Campbell is the owner; there is no attorney.

1434. You say that Brooks got into the cart on Saturday; were there any other people in the cart?—Yes, there were.

1435. Look again at the two pages of the book, and say if all the writing on both pages is of the same handwriting?—Yes, they are.

1436. Had Brooks a horse with him on the journey from Morant Bay to Golden Grove?—No.

1437. Did you see much of Brooks that Saturday evening after you arrived at Golden Grove?—I did.

1438. What situation did you fill during martial law?—Book-keeper on Golden Grove estate.

1439. Where did you go to after you arrived

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at Golden Grove that Saturday?—I stopped at Golden Grove.

1440. You have said Brooks was sick on the Saturday; what was the matter with him?—He was complaining of fever and pains in his stomach.

1441. Did you see any prisoners brought into Golden Grove on the Sunday?—Yes, I did.

1442. Where did they come from, and how many?—I can't say where they came from, nor how many, as several came in at different times.

1443. Who brought them; if you cannot tell all, tell some?—The Maroons brought in some; I cannot say by whom others were brought in; I know they were brought, but I did not particularly see who brought them.

1444. How did you occupy yourself during the whole of that same day?—I was not very well; I was suffering from pains; I was in barracks the whole day.

1445. *By Court.*] Do you remember the month and the year these circumstances occurred in?—They occurred in 1865; if I am not mistaken, it was October.

1446. You have said Dr. Alvarenga attended Mr. Brooks on that Sunday; at what hour was that?—He came there about 10 a.m., that is, to the barracks, where Brooks was sick; about 10 a.m.; and I know he attended him then.

1447. When you were sick in barracks, were you in the same room with Brooks?—I was in the next room to Brooks.

1448. Had Brooks any one to nurse him while sick; if so, whom?—Yes, he had a woman nursing him; her name was Fanny; she came from Stokes Hall.

1449. How far is Stokes Hall from Golden Grove Great House?—At the utmost, it could not be more than a mile and a quarter, for it is a neighbouring property.

[The Witness withdraws.

Fourth Witness for Defence.

JAMES CRUICKSHANKS, Master Carpenter and Assistant Engineering at Lavering Hall, St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

J. Cruickshanks.

1450. *By Prisoner.*] DURING martial law, what was your occupation, and where were you; do you remember the day during martial law that volunteers and others came to Golden Grove from the direction of Stokes Hall and Morant Bay; did you see them on their arrival at Golden Grove?—I was then in charge of the Great House at Golden Grove; I saw volunteers and others arrive at Golden Grove about two p.m. on Saturday, 21st October 1865.

1451. Before those volunteers came into Golden Grove on that Saturday, did you see any black soldier or corporal at or near Golden Grove Great House or barracks, or about there, that same Saturday; if so, who was he; about how long was he there before the volunteers arrived?—There was Corporal Hunter and two or three others; about two hours before the rest of the regiment arrived to which he belongs, the 1st West India Regiment. It was after nine a.m.; I did not note the time.

1452. Did you on the Sunday following that Saturday see any prisoners brought into Golden Grove by the main road between the church and Great House, or else how; by Mr. Brooks, the volunteer and book-keeper?—No, I cannot say; I did not see them, but they could not have been brought in by Mr. Brooks, past the church, because I would have seen them; during the whole day I was very busy providing for the troops, and I did not notice how many might have been brought in.

1453. Do you know "Fanny," or Frances Thompson; did you see her here this morning as a witness, and did you see her during martial law at Golden Grove?—I know her; I saw her here this morning, and at Golden Grove during martial law.

1454. What was she doing at Golden Grove during martial law, to the best of your belief; who gave out rations, articles of food, and nourishment; who had charge of such things at Golden Grove?—I think she was first made assistant cook, and afterwards Mr. Chisholm appointed her to attend the sick, Mr. Brooks, who was very sick, and young Mr. Mais; I gave out the articles of food.

1455. Whereabouts would prisoners be put when first brought in to Golden Grove; could anybody in or about the square readily see prisoners brought in by the road from the direction of the Post-office; is it all an open place between the several buildings?—Prisoners would first be put underneath the Great House; anybody in or about the square could see prisoners brought in by the road from the Post-office; it is all quite open between the several buildings.

1456. Do you know of your own knowledge whether Mr. Alvarenga, of Golden Grove, was attending, or was called to attend Mr. Brooks while he (Mr. Brooks) was sick, as you stated?—I know of my own knowledge the whole time he was attending Mr. Brooks and Mr. Mais, for he came daily to the Great House and ordered such nourishment as tea, as was required for him, or such as he called for.

1457. On the 21st October, the Saturday, did you hear any report of any three men being shot at or near the Iron Bridge on that day; when first did you hear of any such report, if at all?—I never heard any such report on the 21st, nor for some time; for a long time afterwards, till it began to be rumoured about; I first heard of it when the Commission came to inquire about men being shot at the Iron Bridge.

1458. How long had you known Corporal Hunter; is he a St. Thomas-in-the-East man, or not?—Yes; he is from St. Thomas-in-the-East; he was born at Dalvey; I have known him from a child; and his father I know also, as he was a carpenter employed by me at Golden Grove.

1459. *By Prosecutor.*] Where do you say you were employed during martial law?—At Golden Grove Great House.

1460. Where are you employed now?—At Golden Grove still, as master carpenter.

1461. Have you been employed on the estate all the intermediate time?—Yes.

1462. *By Court.*] Which came in first on Saturday, 21st October, to Golden Grove, the volunteers

or

or the party of the 1st West India Regiment?—The volunteers from Morant Bay arrived first.

1463. At what time did the party of the 1st West India Regiment arrive?—It was some time after 2 p.m.; some time after the volunteers, but I cannot state the exact time.

[The Witness withdraws.

J. Cruickshanks.

7 January 1867.

Fifth Witness for Defence.

ALEXANDER LOW, Planter, at Golden Grove Estate, being duly sworn, is questioned by the Prisoner.

A. Low.

1464. *By Prisoner.*] WERE you a book-keeper on Golden Grove during martial law; did you come with volunteers and others to Golden Grove from the direction of Morant Bay and Stokes Hall, and when; and was Mr. Brooks then on the road with you and others?—I was a book-keeper at Golden Grove during martial law. I came on the 21st October 1865 to Golden Grove, from Morant Bay; Mr. Brooks was then with us.

1465. State what you know about the health of Mr. Brooks on that Saturday and the Sunday following. State as to each day for itself. On the road and at the barracks how was he?—I was coming up from Morant Bay on the 21st; Mr. Brooks took sick on the way coming, and all that night. Dr. Alvarenga attended him the next morning, Sunday morning; and he likewise attended me at the same time.

1466. In what building at Golden Grove was Mr. Brooks when he was sick on the Saturday night and the Sunday?—In the barracks.

1467. Are those barracks the same quarters in which you were then laid up sick?—Yes.

1468. Did you see Mr. Brooks, on the Sunday, go out or bring in any number of prisoners; was he in a fit state to be able to leave Golden Grove that Sunday?—I did not see him go out or bring in any prisoners; he was not in a fit state to leave Golden Grove that Sunday, that is, the 22nd, the day after we arrived from Morant Bay.

1469. Who attended and nursed Mr. Brooks besides the medical man on the Saturday and Sunday; who nursed you?—It was a woman from Stokes Hall; but I forget her name, except that it was Fanny; the same woman nursed me.

1470. *By Prosecutor.*] Where are you employed now, and where have you been employed all the time since martial law?—I am employed now at Golden Grove, and have been ever since martial law.

1471. Did you keep your room on the 22nd of October 1865, the Sunday?—No; I did not keep my room all day.

1472. When were you in and when out of your room, that Sunday?—I came out between 10 and 11 a.m., and went back at night.

1473. What did you do between the time of coming out and returning?—Walked up and down the barracks.

1474. Did you see any prisoners flogged that Sunday; if so, tell how many?—I did not see any prisoners flogged on that day.

1475. Did you see any prisoners brought into Golden Grove on that Sunday after you left your room?—Yes; I saw four from Bath, brought by Maroons; I saw no others.

1476. Did you and Brooks sleep in the same room?—No.

1477. Did Dr. Alvarenga see you in the morning before you left your room?—Yes, he did, on Sunday.

1478. Did you see Brooks walking about that Sunday?—No.

1479. Did you see Brooks at all that Sunday?—Yes; I saw him in the morning.

1480. Was that after you came out of your room?—Yes.

1481. Where did you see him?—In his room.

1482. Did you leave Golden Grove at any time during the disturbances of 1865; and if so, why?—Yes; I went out on a foraging party round by Stokes Hall and Hampton Court, on the 23rd October 1865.

1483. You are asked if you left Golden Grove before any military or other aid came to the estate?—No; I never left Golden Grove before the soldiers came there.

1484. *By Prisoner.*] When you saw Brooks in his room, after you came out of yours on the Sunday morning, whereabouts and how was he; in that room?—He was lying upon his bed; I cannot tell how he was; but he was in bed; he had his trousers on.

1485. *By Court.*] How did Mr. Brooks go to Golden Grove that Saturday with you and the other volunteers?—He came part of the way in a cart, and part of the way on horseback. Mr. Chisholm ordered him out of the cart, but he would not come.

1486. What became of Mr. Brooks' horse when he got into the cart?—He had no horse of his own at Morant Bay. I do not know what became of the horse he rode on part of the way. He was in the cart the first part of the way, and rode the other part.

1487. Was he in the cart or on horseback when he reached Golden Grove?—He was riding then.

1488. How do you know that Dr. Alvarenga attended Mr. Brooks on the Sunday?—Because I heard him go into Brooks's room, and there was nobody else walking there at the time, as they were all out.

1489. Do you know at what time Dr. Alvarenga attended Mr. Brooks on that Sunday?—Between nine and ten o'clock in the morning.

1490. At what hour did you see Mr. Brooks on the Sunday?—About 11·30 a.m.

1491. You have said you did not see Mr. Brooks go out on Sunday. Could he have left Golden Grove Estate on that morning without your knowledge?—No, he could not. The doctor was attending him in the morning. I would have heard him if he had gone out before the doctor attended him. I was lying in the third room from Mr. Brooks.

1492. Is there a common hall into which the doors of the bed-rooms open?—There is a piazza right along into which the bed-room doors open.

[The Witness withdraws

Sixth Witness for Defence.

ROBERT JOHN STUART, Planter at Golden Grove, being duly sworn, is questioned by the Prisoner.

R. J. Stuart.
7 January 1867.

1493. *By Prisoner.*] WHAT was your occupation during martial law, and where and with whom were you about the time that volunteers and others came from Morant Bay to Golden Grove, past Stokes Hall during martial law?—I was a planter at Holland Bay during martial law; I came with volunteers from Morant Bay past Stokes Hall to Golden Grove, on the 21st October 1865.

1494. Did you see Mr. Brooks, the volunteer and book-keeper, on Saturday, the 21st; and where first; how was he then?—At Morant Bay I saw him first, on the 21st; he was in good health in the morning.

1495. On the road, that route, did you see a cart near Stokes Hall, or on the road, and who was in it?—I saw a cart on the road near Stokes Hall; I saw the cart the whole way along the road. Mr. Brooks was in it, complaining of being sick.

It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, the 8th instant.

SEVENTEENTH DAY, 8th January 1867.

On Tuesday, the 8th January 1867, at 10 a.m., the Court re-assembles, pursuant to adjournment, present the same Members as yesterday; and proceeds with the Examination in chief of ROBERT JOHN STUART.

R. J. Stuart.
8 January 1867.

1496. *By Prisoner.*] WHAT became of Mr. Brooks that Saturday evening, to your knowledge?—He was at the Golden Grove Barracks all the time.

1497. Was he well or ill that night, to the best of your knowledge?—He was sick that night.

1498. Do you know the room in which he was sick that night?—I do; it was in Mr. Chisholm's room.

1499. How many bed-rooms are there, together with Mr. Chisholm's room, opening on the piazza; are they all quite close to each other, next to each other?—There are three on Mr. Chisholm's side, all opening on to the piazza, and all close to each other.

1500. Did you see Mr. Brooks on the Sunday morning, and where; and was he then ill or well, or in bed, or how?—I saw him on Sunday morning, before seven o'clock, in his room, complaining of being sick. I forget at the time whether he was in bed or not.

1501. Do you know who were attending him as nurse and doctor. Speak of your own knowledge, please?—One Fanny Thompson was attending him as nurse; Alvarenga as doctor.

1502. Did Mr. Brooks bring in any prisoners on that Sunday to Golden Grove in your presence, or to your knowledge?—He never brought in any prisoners in my presence on Sunday, 22nd, nor to my knowledge did he bring in any prisoners at all.

1503. Did Mr. Brooks go out of Golden Grove, to your knowledge, that same Sunday?—He never went out, to my knowledge, that day.

1504. Was Mr. Brooks a very active man in the performance of his volunteer duties during martial law?—He was not active at all; he never performed any duties that I know.

1505. On that 21st day of October, the Saturday, did you hear of any three men being shot near the Iron Bridge on that Saturday; when first, if at all, did you hear any such report?—I never heard of any three men being shot on Saturday; I first heard of it about the 1st April.

1506. *By Prosecutor.*] Did you know a man named Samuel Walker belonging to, or residing on or near, Holland Estate, just before and up to the early part of martial law?—I did.

1507. What became of that man?—He was executed, I believe, at Manchioneal.

1508. Did you know a man named Samuel Bruton, residing on or near Holland Estate, during or just before martial law?—I do not remember him.

1509. Did you ever write a paper with the name of Samuel Bruton on it as a man to be taken up?—No; I never remember doing such a thing of a man named Samuel Bruton.

1510. Did you ever write any paper with one or any other number of names on it of persons to be taken up?—Yes, I wrote a paper.

1511. Did you ever see that paper again?—Never saw it again.

1512. What became of it?—I cannot say.

1513. Can you tell, as a matter of fact, what persons you at any time suggested should be taken up?—I cannot tell the number, but I can some names: Samuel Walker, Allen Rose, Richard Roden; that is all I can recollect.

1514. Were Samuel Walker, Allen Rose, and Richard Roden, taken up?—I do not know myself, but the man who took them up told me he brought them from Holland Pimento; that is the names of the negro houses. I saw them after they were taken up.

1515. Who was the man that brought them up, and to what place?—Isaac Cornwall; they were brought to Golden Grove.

1516. When were they brought to Golden Grove?—Some time on Sunday, the 22nd.

1517. Who accompanied Isaac Cornwall?—I cannot say.

1518. Do you know a man named Bevis Hunter; did you see him on that Sunday (22nd) at Golden Grove?—I know Bevis Hunter; I did not see him that day at Golden Grove.

1519. Do you know Thomas Brown and James Spronl; did you see either of them at Golden Grove on that day (22nd)?—I know the two men;

men; I did not see them on the 22nd at Golden Grove.

1520. Do you know Allan Bignall, Robert Speed, John Hamilton; did you see any of them at Golden Grove on the 22nd?—I did not see any of them at Golden Grove on the 22nd; I know them all.

1521. Did you see the prisoners brought in to Golden Grove on that 22nd of October, or did you see them afterwards, and when and where?—I did not see them brought in; I saw them at Golden Grove, in the Mill-house; it was in the afternoon I came in; they were brought in before that.

1522. What was done to the prisoners, that is, Rose and Roden, at Golden Grove on that Sunday, or the day after?—There was nothing done to them on the Sunday, that I remember. Roden was flogged the day after. Nothing was done to Rose at Golden Grove that I know.

1523. You say you saw the prisoners in the afternoon when you came in; where did you come in from?—I was out with the troop that day; the last place we come from was Winchester negro houses.

1524. How many prisoners, as near as you can remember, did you see in the Mill-house?—I cannot remember how many; there might be about 20.

1525. What hour of the day did you go out with the troop?—Seven a.m.

1526. And at what hour did you return?—As near as I can remember, it was about 3 p.m., or it might be after that.

1527. You have said Dr. Alvarenga attended Mr. Brooks on Sunday; at what hour of the day did you see him attending?—I saw him that afternoon.

1528. You have said you did not see the prisoners come to Golden Grove on the 22nd, how then do you know that Isaac Cornwall brought the prisoners?—He told me he had brought them, and I saw him on the 22nd after they were in.

1529. What prisoners did Cornwall tell you he had brought, the whole you saw in the Mill-house, or any, and what portion?—The prisoner objects to this question on the following grounds:

The Court can only hear evidence on oath. Cornwall ought to give his evidence on oath. The statement to the witness by Cornwall is not on oath, and, therefore, is not evidence. What Cornwall told the witness in conversation, in the absence of the prisoner, is no evidence against the prisoner.

The Prosecutor replies—

The witness has said that he was told that "Isaac Cornwall brought the prisoners;" he then said "he was not present when the prisoners were brought." This, after being cautioned that he was only to speak of facts within his own knowledge, when he is tested by a question to the effect, "You have said that Cornwall brought in the prisoners, and again, that you were not present when the prisoners were in; how then do you know that Cornwall brought them?" he says Cornwall told him so; it is therefore in this stage competent to the prosecutor, and his right to test further the witness's statement, and to lay such a foundation as may seem necessary for showing that Cornwall never made any such statement, or that the prisoners, of whom Cornwall spoke, were not the same prisoners who were the subject of the inquiry to which the witness gave the first answer.

R. J. Stuart.

8 January 1867.

The Prisoner rejoins—

The Prosecutor got the fact of Cornwall having told him about prisoners. It is submitted that it is contrary to the rules of evidence to get out any detail of that conversation not on oath, held too in the absence of the prisoner. All this arose on the prosecutor's own questions.

The Court is cleared for deliberation,—decides that the question, in its present form is inadmissible; and, being re-opened, this decision is announced.

1530. *By Prosecutor.*] Where were you employed during martial law, and in what capacity?—I was overseer on Holland Estate.

1531. What is meant by the term Holland Pimento?—The negro houses on the estate.

1532. How near did you go to the prisoners who were in the Mill-house at Golden Grove?—I went into the Mill-house on Sunday.

1533. Can you give the names of any other of the prisoners besides those three you have already named?—No.

1534. *By Prisoner.*] You spoke of negro houses at Holland Pimento, at what distance are they from Golden Grove; are they all scattered about in different parts, or all close together?—It is about two miles from Golden Grove, as near as I can guess; they are not scattered far apart; they are close, like a negro village.

1535. Is there, or not, a road leading from Holland Estate, where negro houses are, to the road that leads from Quaa Hill through Amity Hall on to the Iron Bridge, and can you not come that way (without coming on the Holland Bay-road) to the Iron Bridge and on to Golden Grove?—Yes, there is; you can come that way by the Iron Bridge; you meet the Holland Bay-road at the Iron Bridge.

1536. You spoke of seeing prisoners in the Mill-house; did you see Maroons at Golden Grove on this Sunday when you were near the Mill-house or the works, and can you tell the names of any such Maroons?—I saw Maroons at Golden Grove on the Sunday, in the afternoon, but I cannot tell any of their names.

1537. You say you suggested names of persons to be taken up; did you ever tell Mr. Brooks to go on that Sunday to take up the three persons whose names you state you suggested to be taken up?—I never told Mr. Brooks to go.

[The Witness withdraws.

Second Witness for Defence re-called.

ALFRED ALVARENGA, Druggist at Golden Grove, being re-called and re-sworn, is questioned by the Prisoner.

Alfred Alvarenga.

8 January 1867.

1538. *By Prisoner.*] WHERE did you reside during martial law, and what then was your occupation; were you with volunteers and others on a route from Morant Bay, past Stokes Hall, to Golden Grove, and, if so, state the day?—I resided, during martial law, at Golden Grove; I was assistant to Dr. Crowdy at that time; I was with volunteers from Morant Bay, and passed Stokes Hall, going to Golden Grove on the 21st October 1865.

1539. Did you see Mr. Brooks, then a book-keeper and a volunteer, on that route, and where was he and how was he, on that road?—When we got to about Leith Hall, near to Port Morant, he complained that he was sick with fever; he was in a cart then, and, as we stopped at Leith Hall a little, he came out of the cart.

1540. Did you and Mr. Brooks come on towards Stokes Hall and thence to Golden Grove that same day, and what became of the cart?—Yes; he and I came on together; now and then he walked, and now and then he got a lift; the cart was one of the Golden Grove carts, it belonged to the same property.

1541. Were you called on to attend Mr. Brooks medically on that Saturday when you got to Golden Grove?—Yes.

1542. Did you attend him, and whereabouts; how was he; and what did you do for him then on that Saturday?—I attended him on that Saturday in the barracks; in one of the rooms of the overseer's apartments; he complained of fever and he was costive; I gave him a couple of pills.

1543. Did you see him again on the Sunday; the next day; state the hours as accurately as you can when you saw him at the barracks that Sunday?—I went and saw him on the Sunday morning about seven o'clock; I won't swear to the hour; I then saw him at eight o'clock, and again at 10 a.m.; at ten I ordered him to be put in a warm bath; told the nurse who was there.

1544. Where, in what room, was he seen by you at about seven, eight, and 10 a.m.; and in what state was he then?—He was still in the same room that he was in on Saturday night; the room that Mr. Chisholm occupied previous to martial law; he was in a state of debility when I left him at that time.

1545. Did you, as a fact, give him any advice then about himself?—I told him about ten o'clock "better not go out, and I would see him again by-and-bye," and I then went away.

1546. Did you attend him again afterwards on the same Sunday or Sunday night in the same barracks?—The nurse came and called me, I think, about 7 p.m. that Sunday, and said Mr. Brooks was worse; I went over, saw him, and gave him an enema.

1547. Do you know the name of the nurse you saw, or the name she goes by; if so, state that name?—She is called Frances Thompson.

1548. *By Prosecutor.*] Who called upon you to attend to Mr. Brooks on the Saturday?—I do not remember; I was going over to the Great House and heard he was still sick, but I do not remember who said it.

1549. When you saw him on the Saturday night, had he fever on him?—Yes; he had fever on him.

1550. When you saw him on Sunday morning, had he fever on him?—Yes; he had fever on Sunday morning.

1551. Had he fever on him when you saw him on Sunday evening?—Yes; he had fever.

1552. What brought on the state of debility you speak of?—He had been living in the woods, and running about; and he had had a long walk, with a lift now and then, from Morant Bay; it was exhaustion.

1553. Did you prescribe any medicine for him between the pills of Saturday night and the enema of Sunday night?—I gave him a powder on Sunday night after the enema; on Sunday morning, about eight o'clock, I gave him a dose of calomel.

1554. Did you give him any other medicine at any time, if so, tell when and what?—On Wednesday I gave him a little quinine as he had no fever.

1555. Did you see him take any of the medicines you prescribed?—Yes.

1556. Was it that Mr. Brooks was very ill, or for what other reason that you paid him three visits so quickly after each other as seven and eight and 10 a.m. on that Sunday?—He is a relative of mine, and I went over of my own accord to see him.

1557. Why then did you leave him from 10 a.m. till you were called again at 7 p.m. that Sunday?—Because he was not dangerously ill; I keep a drug shop, and I left him then to look after my own business.

[The Witness withdraws.

Seventh Witness for Defence.

DAVID FORD, Coppersmith, Lloyds Penn, St. David's Parish, being duly sworn, is questioned by the Prisoner.

David Ford.

1558. *By Prisoner.*] Is Lloyds your own property; do you work in St. Thomas-in-the-East on the estates?—Lloyds is my own property, and I work on the estates in St. Thomas-in-the-East.

1559. Where were you during martial law; what rank did you then hold; did you come with volunteers and others from Morant Bay, past Stokes Hall, to Golden Grove, and, if so, when was that?—I was in St. Thomas-in-the-East during martial law; I was second serjeant in Ford's Irregular Volunteers; I went from Morant Bay to Golden Grove with volunteers on Saturday 21st October.

1560. Did

1560. Did you see Mr. Brooks, the volunteer and book-keeper, on that march; can you tell what became of Mr. Brooks that Saturday and that Sunday to your own knowledge; state, as accurately as you can, what you know?—I saw him on that march; Mr. Brooks accompanied us on that Saturday from Morant Bay to Golden Grove; he complained of being sick on the route, and rode in a cart nearly all the way; to the best of my knowledge he remained sick at Golden Grove that Saturday and the Sunday.

1561. Did you leave Golden Grove that Sunday at all?—I did not.

1562. Who had charge of the barracks, the overseer's and book-keeper's house; who had charge of the Great House on that Sunday at Golden Grove?—I had charge of the barracks; the overseer's and book-keeper's quarters composed the barracks at that time; I cannot remember who had charge of the Great House.

1563. Was Mr. Brooks under you as a volunteer at the time spoken of?—He was.

1564. If prisoners were brought in by a volunteer under you in your company, to whom would such prisoners be reported in the absence of others; to whom on that Sunday would prisoners be reported by any volunteer in Ford's Irregulars?—To me.

1565. Did you give Mr. Brooks any leave to go out of Golden Grove that Sunday, or did he report to you that Sunday that he had been out and had brought in any prisoners at all on that Sunday to Golden Grove?—I did not give him leave, nor did he report to me that he had brought prisoners in.

1566. Where, and in what room, did you see Mr. Brooks on the Sunday?—In the room which had been occupied by Mr. Chisholm previous to the rebellion, next the dining hall.

1567. You remained, you say, at Golden Grove all the Sunday; where was Captain Ford when you were left there?—All the men who were mounted went out in the morning, and, to the best of my knowledge, Captain Ford went out with Captain Adcock.

1568. Tell or show the Court the whole length and width of the hall or piazza on which that room, in which Mr. Brooks was, opens. Confine your attention first to that room and the two next, on the same hall?—The length of the piazza and of the three rooms which occupy the same length, I should say, as near as I could guess, is between 10 or 11 paces; and the breadth of the piazza, I should think, is about a third of its length.

1569. Can any person from either of those three rooms go away from the house except by first coming into that hall or piazza, or can any person go into those three rooms without first coming into that hall or piazza?—No, you can't.

1570. Were any prisoners, to your knowledge or in your presence, on that Sunday brought in by Mr. Brooks to Golden Grove?—Not to my knowledge.

1571. You said you worked on estates in St. Thomas-in-the-East; did your work on the estates give you means of being amongst all classes of people in the Plantain Garden River District generally?—Amongst the overseers and book-keepers principally.

1572. Did you on the Saturday, the 21st October, during martial law, hear of any three men being shot at or near the Iron Bridge on that day, Saturday, or hear at all subsequently of any such report; and if so, when first?—I heard nothing of any persons being shot at the Iron Bridge during the rebellion for a long time afterwards; I was in Kingston when I first heard it. I cannot remember the time, but it was either whilst the commission was sitting in Spanish Town or after.

David Ford.
8 January 1867.

1573. Was Mr. Brooks a very active man in the discharge of his duties as a volunteer during martial law?—Well, I thought him the laziest I had in the company.

1574. *By Prosecutor.*] You have spoken of Captain Ford; was he in authority over you and Mr. Brooks?—He was; at least I understood so.

1575. Did you see any prisoners brought into Golden Grove Estate that Sunday, 22nd October, by anyone?—I can't remember exactly the dates, but there were some brought in every day. I cannot particularly recollect about that Sunday, but to the best of my knowledge some were brought in every day while we remained there.

1576. Whereabouts on Golden Grove did you remain that Sunday, 22nd October 1865, during the whole day?—I did not remain in any one place, but I was chiefly in the barracks, as I was in command of it, and I was also about in the yard.

1577. Did you see Mr. Brooks on that Sunday?—I did.

1578. When did you see him?—I can't state the hour; to the best of my recollection, he was in his room all day.

1579. Where did you see him?—In the barracks.

1580. In what part of the barracks?—In the room he occupied.

1581. Did you go into the room?—I did.

1582. How often did you go into the room?—I can't remember now.

1583. Do you work for Golden Grove Estate?—I do.

1584. Do you know any of the men named Bevis Hunter, James Sproul, Robert Speed, John Hamilton, Allan Bignall, and Thomas Brown, residing on or near Holland Estate?—No.

1585. *By Prisoner.*] You say you can't state the hour when you saw Mr. Brooks on the Sunday; were you, or not, frequently in the barracks and in Brooks' room that Sunday; did you miss him at all that Sunday from the barracks, or have you any good reason whatever to believe that he was absent from those barracks that Sunday?—I was frequently in the barracks, but I can't remember if I was frequently in Mr. Brooks' room. I did not miss him at all that Sunday from the barracks. To the best of my knowledge, he was not absent that day.

1586. At that time were there any doors on these bed-rooms in the barracks opening on to the hall, or were they all open or not?—There were portions of doors, but they had been smashed up; they were all open.

[The Witness withdraws.

Eighth Witness for Defence.

MICHAEL CUFFE MYERS, Coppersmith, residing at Lloyds, St. David's Parish, being duly sworn, is questioned by the Prisoner.

M. C. Myers.

3 January 1867.

1587. *By Prisoner.*] Do you know Mr. Brooks, a book-keeper and volunteer; did you see him during martial law on a route from Morant Bay to Stokes Hall and Golden Grove; state the day; were you a volunteer with Mr. Brooks in the same company during martial law?—I was a volunteer with Mr. Brooks in the same company with him, and left Morant Bay on the 21st October 1865, and went to Golden Grove.

1588. Can you tell how Mr. Brooks was on that 21st October 1865, just before or when he got to Golden Grove; was he well or sick?—He complained of being unwell on the day we went up there.

1589. Where did he stay that night of the 21st October 1865, and how was he then?—He was at Golden Grove Barracks with all of us that night; he still complained of being sick, of being unwell.

1590. Did you remain on the next day after this 21st October 1865 at Golden Grove, a Sunday, and did you see Mr. Brooks that day; did he leave the barracks that Sunday to your knowledge?—I remained at Golden Grove that Sunday; I saw Mr. Brooks that day. To the best of my knowledge, he did not leave the barracks that day.

1591. Did Mr. Brooks, in your presence or to your knowledge, bring in any prisoners to Golden Grove on the Sunday next after that 21st October 1865?—Not to my knowledge.

1592. Did you hear on that 21st October 1865, of any three men being shot at or near the iron bridge on that day; or if you heard any such report at all, when first was that?—I heard nothing of that while we remained at Golden Grove; and the first intimation I had of it was when the Commissioners came up to exhume the dead bodies, the supposed dead bodies. I cannot give the date, but I happened to be working at Duckenfield when the exhumation took place.

1593. *By Prosecutor.*] What did you with yourself on Sunday, 22nd October 1865?—I remained within the barracks; I mean about the barracks. I had no particular orders that day to go out or stay within doors.

1594. Did you see Mr. Brooks on that Sunday?—I did.

1595. What time did you see him?—I saw him all the morning, to the best of my recollection.

1596. Where did you see him?—In and about the barracks.

1597. Was he walking about like yourself with nothing particular to do?—Yes; he had nothing particular to do that day.

1598. Did you see any prisoners brought into Golden Grove that day?—Yes, I did.

1599. Who brought them in, and where did they take them to; what part of the property?—Maroons brought them in and took them to head-quarters—the Great House at Golden Grove.

1600. What time of day did the prisoners, those brought in by the Maroons, come to Golden Grove?—I am not positive about the time, but I know they were brought in that day; some time between sunrise and sunset. I cannot fix the time nearer than that.

1601. How many prisoners were brought in by the Maroons?—I cannot positively say the number; it might have been about 10 or 12, or 15.

1602. Did you see them come into the property, or did you see them after they had come in and halted?—I saw them coming in, and I saw them when they halted.

1603. What direction did they come from?—They came from the Winchester-road on to Golden Grove, those I saw; but the same road comes from Hordley as well as Winchester, so I could not tell where they came from.

1604. Were any prisoners other than those you say Maroons brought in, brought to Golden Grove on that Sunday, 22nd October 1865?—None, to the best of my recollection.

1605. Did you know any of the prisoners you saw at Golden Grove on the 22nd October 1865?—I did not.

1606. *By Court.*] You have said that the prisoners were marched to head-quarters at Golden Grove Estate Great House; to what officer were they handed over then on Sunday, 22nd October 1865?—I think, to David Ford, junior serjeant, who was then in command.

1607. Do you remember if you saw Mr. Brooks and Lieutenant Adcock together on Sunday, or Mr. Brooks and Captain Ford?—I don't remember seeing them together on that Sunday or any other day, while we were there quartered.

[The Witness withdraws.

Ninth Witness for Defence.

CAPTAIN HOLE, 2nd Battalion 6th Regiment, being re-called, is questioned on his former oath by the Prisoner.

Captain *Hole.*

1608. *By Prisoner.*] DID you on the 19th of October 1865, as a fact, report by a despatch to the officer in command upon the movements of troops under your command at Muirton, Manchioneal?—I wrote a despatch to that effect, and I believe it was on the 19th; I sent it to Brigadier General Nelson, to Port Antonio.

1609. Where is that despatch, to the best of your belief, now?—I believe the Major General Commanding has it.

1610. Did you or not, as a fact, write that despatch upon official reports made by any officer in your command, and sent out by you on duty on the immediately preceding day, the 18th, a Wednesday?—I did write that despatch upon official reports made by Ensign Cullen, and I believe it was the preceding day on which I had sent him out.

1611. To what direction, and with whom, did you send out Ensign Cullen on that preceding day

day; and was any official report made by him to you, that Wednesday, on his return to Muirton?—I sent them out to "Friendship," but owing to a mistake of the guide they were taken to a wrong place. I sent Staff Assistant Surgeon Morris out with Ensign Cullen. An official verbal report was made to me by Ensign Cullen on his return to Muirton that day; and on his report I wrote a portion of my despatch.

1612. On that day did you ascertain whether or not your orders had been obeyed, or, if not, was any official statement made to you as to the direction to which the troops under Ensign Cullen's command did actually go on that Wednesday; and did you act accordingly in reference to your communications to your superior officer?—I ascertained that they had taken the wrong road; an official report was made to me about the direction they had taken; as reported to me, they had gone to Hayning, and Jericho, and returned, I think, by Scott's Run. I reported accordingly to my superior officer, Brigadier General Nelson.

1613. Did you on that Wednesday, or before you wrote your despatch, in any way ascertain that a man of the name of Billy or William Gray, had been shot at or on Grange Hill, on that Wednesday, on the march that day; if you had, would it have been your duty to report that fact?—I never heard of any man being shot on that day; if I had heard of it I should have reported it, of course.

1614. Do you remember Staff Assistant Surgeon Morris's revolver lying in the window at Muirton in two pieces (that is, the cylinder apart from the barrel), and do you know how it was rendered useless?—I remember his revolver lying in two pieces in the window at Muirton; it was rendered useless by the loss of the pin. I cannot state from what date to what date this revolver lay there, but I am certain it was there the day he was out; the 18th, as I believe it was.

1615. Can you state what became ultimately of the revolver, after the loss of the pin; to the best of your belief?—No. I only know it lay at Muirton for some days, and was in a very rusty state.

1616. You spoke of a certificate or pass that you had given, in writing, to Stephen Johnson; to the best of your belief, did you give that paper to a person who represented himself to you as Stephen Johnson; do you believe that you wrote the name "Johnson" by mistake, instead of "Grant," on that paper?—I think it was given to the person whose name is on the paper. I do not think that a constable, who could read or write, would have ventured at that time to use a paper which did not bear his name; he would have been afraid to do so, and would have brought it to my notice.

1617. *By Court.*] During martial law, did you keep a list of suspected persons, or prisoners, to be apprehended; were you in the habit of giving lists of such persons to the parties you sent out, or had the parties access to the lists; did you give or show a list to Ensign Cullen, or any of the party, on the 18th of October?—I received lists from different people. I got one from Spanish Town, through the Brigadier General, for me to report on; one from a son of a clergyman, he was then in Kingston; and I believe there were others, but I cannot specify from whom I received them. I gave no list to parties going out. All the people, I may say, were mostly apprehended by constables. Persons could have seen the lists who liked. I gave no list to Ensign Cullen on the 18th, nor do I recollect showing him any list. He was not sent out to apprehend any one, but to go to "Friendship," where it was reported a body of rebels were entrenching themselves.

1618. Did you give instructions to parties you sent out, as to their operations in regard to executing men, taking prisoners, and burning houses; was it a part of their duty to go to places off the direct route on which they were sent, if they had reason to think it desirable?—I gave no instructions as to executing men or taking prisoners; there were such a lot of constables to whom they could have been handed over. Nor did I give orders for burning houses, except that those in which stolen property was found should be burnt to the ground. On emergencies parties sent out would certainly have left their direct route, or on receiving reports; that was left discretionary with the officer commanding the party.

1619. Did you receive any official report with regard to the party you sent out on the 16th of October, consisting of a serjeant and 12 men, with Assistant Surgeon Morris?—Yes; their report was their bringing in the people I had sent them out to fetch in.

1620. Did you send out any party on the 17th, in the neighbourhood, the day on which you gave the men a rest?—I sent out no party on that day, to the best of my belief; in fact, I am certain I did not.

1621. Did you receive a report, on any day, of a party going to Grange Hill or Deeling?—No; I have no recollection of my own troops going there by my orders. I received no report to that effect. I do not know the name of Deeling. Two or three of my men went, I believe, to Grange Hill without orders.

1622. Did you send any white soldiers with Ensign Cullen, on 18th October 1865?—I do not believe I sent any white soldiers, that is, of the 6th Regiment, out with Ensign Cullen's party on that day; but there are all shades of colour in the black troops.

[The Witness withdraws.

It being now four p.m. the Court adjourns till ten a.m., to-morrow, the 9th instant.

Eighteenth Day, 9th January 1867.

On Wednesday, the 9th January 1867, at 10 a.m., the Court re-assembles, pursuant to adjournment. Present, the same Members as yesterday.

Tenth Witness for Defence.

John Sinclair, Manager of Duckenfield Estate, Saint Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

J. Sinclair.
9 January 1867.

1623. *By Prisoner.*] State your residence, and occupation and position, in St. Thomas-in-the East, in 1865 and now?—In 1865 I resided at Duckenfield. I was the manager of that estate, and still am so.

1624. During the year 1865, did you ever mention the dates of the 21st and 22nd, or 23rd October 1865, to any one, or did any one ever state those dates to you as being the days on which three men were shot and buried near the Iron Bridge; did that ever occur between you and Bryan, Speed, or Phillips, in 1865?—Bryan came up to Golden Grove, where I was then acting as quartermaster for the troops under Captain Adcock, on Sunday, 22nd October 1865, with Cyphus Wills and Peter Phillips. They never said a word to me about anyone having been shot either on that or the the previous day. I mentioned to Bryan to turn out the gang, as many men as he could, to work on Duckenfield Estate to-morrow (meaning Monday the 23rd), but I did not mention the day of the month, but merely "Monday."

1625. When first did you hear any rumour of any three men being shot and buried near the Iron Bridge?—I stated in my evidence to the Court before, I think, that it was about the end of March. Since then I found a part of Peter Phillips' deposition, taken by me as a justice of the peace, and it was sworn to before me, the 1st day of April 1866; so that was the very day I went to see the grave, and the first day I had any knowledge of any persons having been shot there and buried in that grass-piece.

1626. Did Dight, a book-keeper, make a representation to you about Bryan. State the fact; and when did he first make that representation to you. State the month if you can; was it before the court martial on Ensign Cullen?—Dight did make a representation to me about Bryan. I think it was about the beginning of September, but I cannot state positively as to the time, as I kept no memorandum of the time. It was prior to our being warned as witnesses on Ensign Cullen's case.

1627. Have you still retained Bryan in your employment, and why have you still done so since that report to you?—I still have Bryan in the estate's employment. I was directed by Mr. Georges, the attorney, to dismiss him, as he would be, to use Mr. Georges' words, "a dangerous man to retain on the estate." I advised him to let me retain him, as it would not look well to discharge him during these investigations; it would look like party spirit, and I therefore asked him to let me retain him.

1628. Did you accompany volunteers from Morant Bay, past Stokes Hall, to Golden Grove, during martial law; state the day and the date?—I did, on Saturday, 21st October 1865.

1629. About what hour did you arrive at Golden Grove on that day; state who were with you on the march, and when you arrived at Golden Grove?—I arrived at Golden Grove about 2 p.m. that Saturday, 21st. Captain Adcock, and some of the 6th Regiment, Mr. Ford, captain of the irregular volunteers, and Captain Astwood and some of his men were with us. I can give, from notes in my pocket-book made at the time, all the names of Ford's men. They were supplied with rifles on the 19th and 20th October, and I, as quartermaster, was directed to keep a list of their names to whom rifles were given out. Twenty-five men, who were supplied with rifles, marched with us that day and arrived at Golden Grove.

1630. On your arrival at Golden Grove did you then see any black soldiers or corporals at or about Golden Grove quarters already on that Saturday?—Immediately after arrival Corporal Hunter came to me and complained that he had been there some time ("from morning," were his words), and had had nothing to eat, and that he had men with him. I saw Hunter and one or two other black soldiers about the place, but I cannot positively state how many.

1631. Did you remain at Golden Grove quarters on the rest of the Saturday, after your arrival, and on the following day (Sunday)?—I did, both of those days.

1632. When you arrived at Golden Grove was Ensign Cullen there already, or did he come afterwards to Golden Grove quarters on that Saturday?—He came after; he came late in the evening, about 5 p.m., I should say; about that time.

1633. Did you see Mr. Brooks, book-keeper and volunteer, on the Saturday and on the Sunday; to the best of your knowledge, how was he; and where did he stay?—I saw Mr. Brooks on the Saturday; he came with us from Morant Bay, on the march; I did not see him on the Sunday; he remained over at the barracks with the other volunteers.

1634. Were any prisoners brought in by Mr. Brooks, or reported as brought in by Mr. Brooks, to Golden Grove quarters that Sunday?—No, there were not.

1635. In the then state of matters, in St. Thomas-in-the-East, was it at all probable that one volunteer would have gone out alone and seek for prisoners off Golden Grove?—Not at all probable; besides, the volunteers were kept under strict discipline, and had every man to report to the commanding officer in the event of his wishing to leave.

1636. Was Mr. Brooks a very active man in the discharge of his volunteer duties?—Far from being active; he never kept a night watch the whole time.

1637. Do

1637. Do you know the grass-piece and bamboo draw-rail on Duckenfield, near by the post-office and Iron Bridge, and Holland Bay-road?—I do.

1638. Have you had occasion to go there frequently; when first did you go there after October 1865?—I went there during the first week in November 1865, but I cannot state the day. I have had since occasion to go there frequently.

1639. Did you then, in November, go near the bamboo draw-rail, and the spot in question, about this matter?—I passed through the draw-rail and close on the spot where the grave has since been opened.

1640. Was there then, in November, any sign of any recent grave at or about that spot?—There was not.

1641. Do you know M'Dermott, a book-keeper at Duckenfield, in the latter part of 1865 and in the early part of 1866?—I do.

1642. Was he sent on estate's work to that grass-piece; and in what month and year was he sent there?—He was superintending the people working there; I think about the end of November or beginning of December 1865.

1643. What use was generally made of that grass-piece in 1865, 1866, and since?—Kept as a pasture for the overseer's horses, and when the grass gets coarse or stubbly it is scythed down and carried to the cattle-pen for manuring purposes.

1644. Did you see that same spot in this grass-piece, in 1866, with Mr. Chisholm?—I did, on the 1st April 1866: the day I took Peter Phillips' evidence, as I stated before.

1645. Standing at any door in Manning's shop, could a person see from that shop the bamboo draw-rail; how was the logwood fence in 1865; was it of the same height in 1866; is it now of the same height as in October 1865?—You could not see the bamboo draw-rail from any door in Manning's shop; the logwood hedge in 1865 was seven or eight feet higher, I can safely swear to seven feet, than it is now; it is now about between four and five feet in height, and when I returned to the estate in the beginning of November, it was about 11 feet high, I think, though I did not actually measure it.

1646. Have you ascertained whether or not a person sitting on an ordinary sized horse, about the middle of the road opposite Manning's shop by the post-office, could in the then state of the logwood fence see the bamboo draw-rail from that place on the road?—I have tested it; you could not see the draw-rail then. When I approached it with Mr. Chisholm on 1st April, I could not see the draw-rail till I got close to it, though the logwood hedge had been cut.

1647. Is there any open bamboo fence in this grass-piece across it?—There is a bamboo fence across the grass-piece; it is a subdivision fence.

1648. Is it or not composed only of rails, dry bamboos laid lengthways on about three or four rails, and all open?—Yes.

1649. In that grass-piece have you or not seen different mounds?—I have.

1650. Did you see Dr. Morris on the Saturday and Sunday, 21st and 22nd October 1865; how was he; was he able to go to dinner?—He was not able to go to dinner on Saturday 21st, but went immediately to the sofa as he entered the house. We were then at dinner, and I got up to receive him. He was on Sunday about the premises; I cannot remember whether he rode out or not with the detachment on Sunday morning.

1651. *By Prosecutor.*] You have said you did not see Mr. Brooks on Sunday, and again that he was in the barracks on Sunday; how do you know he was in the barracks?—The woman in attendance on him told me he was sick; I heard that he was sick.

1652. You say you have been in that grass-piece, from which the bodies were taken, often since November 1865; did you ever observe the grave on any of those visits?—I observed the grave; the first observation I made of the grave was on the 1st April 1866; I observed it on several occasions since the opening of the grave.

1653. Did any one point out the spot to you on the 1st of April 1866?—Yes, Peter Phillips did.

1654. Did you make any of these visits, which you say you made often, to that place between April 1866 and the time of the opening of the grave?—Yes, I did; I went in there between those periods.

1655. Did you see the grave on those visits?—I saw the spot; I could not help seeing that spot on any occasion that I entered the grass-piece, because my horse would pass very close to it.

1656. In April 1866, and on the occasions of your subsequent visits, did the spot present the same appearance as it did when you first saw it in November 1865?—On my visits up to the time of the opening of the grave, the ground presented the same appearance as it did in November 1865, but since the grave has been opened, the ground presents a different appearance.

1657. Could a person standing at or near the door of Manning's shop, or in the road near the shop, see the head of a person standing at the bamboo rail?—No, he could not; at any time he could not.

1658. Tell what sort of foliage logwood has, what size leaves, and whether they grow thickly or otherwise?—Small leaves, but very thick branches, thick foliage; when I say thick foliage, I mean, though the leaves are small, they cluster together, and grow very thickly.

1659. Were you one of the persons who, with your family, left St. Thomas-in-the-East, in consequence of the disturbances of October 1865?—I was.

1660. *By Court.*] Do you know the Christian name of the Mr. Brooks, the volunteer, about whom you have been giving evidence; and are you aware whether there was more than one person of the name of Brooks at Golden Grove during martial law?—I have Mr. Brooks' name entered in my pocket book as "Alfred," given me by himself at the time; I know of no other Mr. Brooks at Golden Grove at the time.

1661. Are you aware whether any notice or information of your going to Golden Grove on Saturday, October 21st, was sent on to Golden Grove; when and where did you procure the carts used in the march of that day?—I am not aware that any information was sent on to Golden Grove; I cannot state where the carts were obtained from; we had some with us, and I think some of them were from the Plantain Garden River district, and others obtained from Lysson's estate; I had nothing to do with the procuring of the carts.

[The Witness withdraws.

Eleventh Witness for Defence.

JOHN LEWIS DIGHT, Book-keeper at Duckenfield Estate, St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

J. L. Dight.

9 January 1867.

1662. *By Prisoner.*] ARE you a book-keeper on Duckenfield estate, and how long have you been a book-keeper there?—I am, and I have been book-keeper there over six months.

1663. Were you a book-keeper at Duckenfield in September 1866?—I was.

1664. Do you know Bryan, the book-keeper or superintendent at Duckenfield; and did you see him in September last year at Duckenfield, at or near the barracks?—I know him; and I saw him in the barracks in September.

1665. Do you remember about the time that Bryan was served with a summons to give evidence against Ensign Cullen?—I remember when he was served at Duckenfield to appear at Golden Grove before some Commission, but I did not then know in whose case.

[The Witness withdraws.

Twelfth Witness for Defence.

ROMEO WILLIAM DRYSDALE, Police Serjeant at Morant Bay, being duly sworn, is questioned by the Prisoner.

R. W. Drysdale.

1666. *By Prisoner.*] WERE you sent to Captain Hole at Muirton, from Morant Bay, by Brigadier General Nelson; and on what day during martial law did you go?—I was sent from Morant Bay to Manchioneal, on 20th October 1865, with a letter from Brigadier General Nelson to Captain Hole.

1667. On what day did you return from Muirton; where did you come to from Muirton that day?—I returned on Saturday 21st, from Muirton to Morant Bay, stopping at the Iron Bridge.

1668. Were you at the post-office, Manning's shop, near the Iron Bridge, that day; whom did you see at the post-office when you arrived there that day?—I was at the post-office, Manning's shop, that day; I came and found Ensign Cullen and Dr. Morris there along with the troops.

1669. Whom else did you see at the Iron Bridge, or at the post-office that day when you got there, besides Ensign Cullen and Dr. Morris, and the troops; state any names you know of?—I saw Manning there when I came, and Anderson, and Cecilia Robinson, and Corporal Hunter; those are all I know; there were many other people besides the soldiers, but I do not know them.

1670. About how long did you remain about the post-office?—I arrived there between eight and nine o'clock, and I remained till I got tea, about three quarters of an hour, or an hour; I had no watch with me.

1671. Did you start with Ensign Cullen from Muirton, or just after?—I start after; I stopped to wait for a letter.

1672. Did you see any prisoners brought there or shot there while you remained at the post office that day; if so, must you have seen them?—None; I would have seen them at the time.

1673. Whereabouts did you see Dr. Morris that day at the post-office?—Inside Manning's private apartment.

1674. On coming down the Quaa Hill-road that morning, did you overtake any soldiers on the road to the Iron Bridge?—I did; they were riding on some horses, seemed knocked up and left behind, and I overtake them; they were black soldiers, but I can't say how many.

1675. *By Prosecutor.*] Did you go straight on without stopping, that is, for any time, on the way to Morant Bay, after leaving the Iron Bridge or Manning's shop that morning?—I stopped at Golden Grove to change a horse.

1676. How long did you stop at Golden Grove, and did you go on from that place without further stoppage?—I lost no time at Golden Grove, not half an hour; I take a man off a horse, and get on the horse; I take him off; I went straight on then to Morant Bay without further stopping.

1677. Did you see the detachment of regular soldiers and volunteers leave Morant Bay that day?—No; I meet the regular soldiers at a place between Phillipsfield and Bowden; they were going then to Golden Grove. I should say the place was about five miles from Golden Grove; among them were a few gentlemen I know.

1678. *By Court.*] When you left Morant Bay on the 20th, did you know or not, that soldiers or volunteers were going to Golden Grove from Morant Bay on the next day, Saturday?—No, I did not; until I met them on the road I knew nothing about it.

1679. Did any of the soldiers who were at the post-office that Saturday, leave for Golden Grove before you, or accompany you there?—I overtake one, at a place called Danderbridge, this is nearer Golden Grove than the post-office. He was walking, and had no rifle; I did not see any leave before me; none went with me, and I did not see any in Golden Grove.

1680. Whereabouts at Golden Grove did you stay to change your horse?—In front of the police station; it is where they keep the market, in front of Tavare's store.

[The Witness withdraws.

Thirteenth Witness for Defence.

RICHARD MOYLE WILSON, Book-keeper, on Plantain Garden River Estate, St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

R. M. Wilson.

9 January 1867.

1681. *By Prisoner.*] WERE you a book-keeper on Duckenfield in 1865, and do you know the grass piece and bamboo draw rail opening from that grass piece on the Holland Bay-road?—I was a book-keeper on Duckenfield in 1865; I know the grass piece and the bamboo draw rail quite well.

1682. As such book-keeper, had you occasion to go into that grass piece in 1865 and 1866?—Frequently. I have been there.

1683. When first, since martial law, were you in that grass piece; did you then see any signs of a fresh dug grave in that grass piece near that bamboo draw rail?—About a month after martial law, I first went into the grass piece; I did not see then any signs of a fresh grave.

1684. If there had been any such signs of a recent grave, must you have seen them?—I should most certainly have seen them.

1685. Is there another book-keeper at Golden Grove now, of the name of Wilson?—There is.

1686. Were you at Golden Grove during martial law?—I was.

1687. Were you with any volunteers who came from Morant Bay past Stokes Hall to Golden Grove during martial law?—Yes; I was in Ford's company of Irregulars. I joined on 20th, and went to Golden Grove on 21st October 1865.

1688. Did you know a volunteer who went by the name of Alfred Brooks; was he with you and others at that time?—Yes; he was.

1689. Was he a book-keeper or not at that time at Golden Grove?—He had been a book-keeper at Golden Grove; and to the best of my knowledge he was so then.

1690. Where else, to your knowledge, had Mr. Alfred Brooks been a book-keeper in 1865?—Nowhere else within my recollection.

1691. Did you see him on the Saturday you arrived at Golden Grove; where was he; and how was he on the Saturday on the road and the Sunday; state particularly as to each day?—Yes, I saw him on Saturday; he was along with us in the company of volunteers; on the Saturday on the road, he complained of being sick and unable to travel on foot a great part of the way; on Sunday he still continued sick.

1692. Did Mr. Brooks go out on that Sunday and bring in any prisoners whatever, to your knowledge; was he well enough to be able to do so?—Not to my knowledge; he was not well enough to do so at the time. I saw him on Sunday morning; that was, I should say, between 6 and 7 a.m.

1693. Did you go out with Lieutenant Adcock and others on the Sunday morning on a route past the Post-office and Iron Bridge?—Yes; I did.

1694. Did you on the 21st October, Saturday, hear of any three prisoners being shot on the 21st, near the Iron Bridge on the Holland Bay-road; when first did you hear of such report, if at all?—I did not hear of it on the 21st; I first heard of it two or three months afterwards when making inquiries for the people, and I was told they were shot at the Iron Bridge; the inquiry I made was of Bryan, the headman, at Duckenfield.

1695. About what month, and in what year, did you make inquiry; can you tell?—The month I cannot say exactly; it might have been January or February 1866.

1696. About what hour did you leave Golden Grove on the Sunday morning with Lieutenant Adcock?—Somewhere about 7 a.m.

1697. About what hour on that day did you return with Lieutenant Adcock to Golden Grove?—About 6 p.m.

1698. *By Prosecutor.*] Did you ride into that grass piece in which you say you saw no marks of a grave?—Both rode in there, and walked in there.

1699. Who were these men you made inquiries about; what are their names?—Their names I do not remember now, with the exception of one whose name, I think, was Miles.

1700. What caused you to make inquiries for these men?—Because I had seen them working upon Duckenfield Estate previously, and at the time of my inquiry they had been absent for some time.

1701. Where did you see Brooks on the Sunday morning?—I saw him in Golden Grove Barracks, in bed.

1702. Are you aware of the roving character of the labourers who work on estates?—Perfectly aware of it.

[The Witness withdraws.

Fourteenth Witness for Defence.

JAMES AUSTIN FOWLES, Acting Surveyor of Her Majesty's Customs, Kingston, being duly sworn, is questioned by the Prisoner.

J. A. Fowles.

1703. *By Prisoner.*] WERE you in St. Thomas-in-the-East during martial law, as a volunteer?—Yes.

1704. Did you go from Golden Grove towards the Iron Bridge with Lieutenant Adcock and others past the Post-office; and what day was it?—I did on Saturday morning, 21st October.

1705. When did you arrive at Golden Grove?—On the Saturday afternoon between 3 and 4 p.m.

1706. You say you arrived on the Saturday afternoon between 3 and 4 p.m., did you remain there that day?—Yes.

1707. Then on what day was it that you went out with Lieutenant Adcock, Captain Ford, and others on a route?—On Sunday morning, the 22nd.

1708. About what hour did you leave Golden Grove on that route with Lieutenant Adcock and Captain Ford, and others on that Sunday morning;

J. A. Fowles.
—
9 January 1867.

morning; and about what hour did you all return?—We left between 7 and 8 a.m., and we returned after 4 p.m. the same afternoon.

1709. Were you all absent from Golden Grove with Lieutenant Adcock and Captain Ford the whole interval between 7 or 8 a.m. and 4 p.m. that day?—Yes; the whole time. Captain Ford turned off near Wheelerfield, I think, and was absent from us for some time, but he rejoined us, and we all arrived at Golden Grove together; I mean by "all," Captain Adcock's men and Captain Ford's.

1710. Then is it possible or impossible that any prisoners would be delivered at Golden Grove by a Mr. Brooks to Lieutenant Adcock or Captain Ford, between 10 a.m. and 11 a.m. at Golden Grove?—Perfectly impossible.

1711. Did you, on that Sunday morning, about the Post-office, or Iron Bridge, or thereabouts, see or hear of any dead bodies lying near the Iron Bridge at any fence, or on any bamboo rail, or meet any body of people with hoes and shovels?—No; I did not see or hear of any dead bodies; nor see any persons with hoes or any implements of that description.

1712. Did you see Dr. Morris at Golden Grove on the Saturday afternoon, or evening; did he dine with you; if not, how and where was he that evening?—I saw him as he arrived from the Iron Bridge. I did not dine with him; nor did I see him that evening afterwards.

[The Witness withdraws.

Fifteenth Witness for Defence.

No. 22. Private James Cox, 2nd Battalion, 6th Regiment, is duly sworn.

The Prisoner requests that he may be permitted to substitute another Witness in place of the one just sworn.

Application granted, and Private Cox accordingly withdraws.

Sixteenth Witness for Defence.

No. 2651. Corporal William Hunter, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

Corporal *W. Hunter.*

1713. *By Prisoner.*] How long have you been in the service; how long a private; how long a corporal?—I have been in the service 10 years and two months. I was a private eight years; corporal all the rest of the time.

1714. Have you received any good conduct rings in the service?—Yes; two.

1715. Were you on the march from Manchioneal to the Iron Bridge and the Post-office with Ensign Cullen and Dr. Morris during martial law?—Yes. I cannot state the day, but I was on that march with Ensign Cullen and Dr. Morris during martial law.

1716. Did you stop at the Post-office, Manning's shop, that same day for some time with Ensign Cullen and Dr. Morris?—Yes; I did.

1717. When you arrived at the Post-office that day, how was Dr. Morris?—He was sick.

1718. About how long did you stay at the Post-office; were you sent on anywhere; if so, by whom, that same day?—Yes; I stay a short time, about five minutes; I was sent on by Ensign Cullen on the advance guard to Golden Grove.

1719. Did you go according to orders to Golden Grove, and leave Ensign Cullen at the Post-office that day?—Yes; I did.

1720. Did you go alone or with other soldiers, when sent on by Ensign Cullen?—I was sent on alone; but there were several men follow me, which I don't know; I mean, I don't know their names.

1721. Whom did you see when you got to Golden Grove that day; when you first got there, and before volunteers and others came there; civilians are meant?—I saw Mr. Cruickshank, carpenter and storekeeper of the estate; he was standing in the Great House yard at Golden Grove. I saw several other people which I do not qualify.

1722. After you had been at Golden Grove that day, did any body of men come in from the direction of Morant Bay?—After I arrived there, some came in about 2 p.m.; but there were a lot of book-keepers, I do not know from volunteers, and I don't know where they came from; there were a lot of them with horses and carts, and some of them were sick men.

1723. Do you remember speaking to any gentleman who came in with the volunteers that day?—Yes; I remember I speak to the overseer of Duckenfield, Mr. Sinclair. I know him well before I was a soldier.

1724. About how long after the volunteers came in, did Ensign Cullen and Dr. Morris come to Golden Grove that day?—I can't say how long, because I was knocking about looking for a place for the men to stop, and I can't recollect the time they came in.

1725. When Dr. Morris arrived that evening, did you see him; and how was he?—I never see him till the Monday.

1726. How was Dr. Morris at the time you left him at the Post-office with Ensign Cullen; and at what part of the road did he get ill before he arrived at the Post-office that day?—I left him ill; he got ill at the turn coming down to Amity Hall, which is called Quaa Hill.

1727. Have you been on that road from Manchioneal to the Iron Bridge recently; and did you then point out the part of the road to anyone where Dr. Morris got ill?—Yes; and I did point out the place where Dr. Morris fell ill. I pointed it out to Mr. Cullen, who did not know it when he got there; and to Mr. Williams, and to the driver of the cab.

1728. During the time you remained at the Post-office on that day, were any three prisoners brought in from Duckenfield or Golden Grove by anyone?—Not while I was there.

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1729. During the time you were on the march, or at the Post-office that day, were any prisoners shot, or did you take part in shooting any that day?—No.

1730. Did you recently go to the Post-office, the Iron Bridge, and the Holland Bay-road, and with whom?—I did go to those places lately, and I went with Mr. Cullen and Mr. Williams.

1731. Did you then notice a cotton tree in the grass piece opposite the Post-office, and a guango tree in the grass piece; and did you make any measurement of the distance from the road just opposite the Iron Bridge to that guango tree?—Yes; I did.

1732. In measuring that distance, and on going to the guango tree, did you pass a bamboo rail on the Holland Bay-road?—I passed two bamboo rails.

1733. What distance, to the best of your recollection, in number of paces was it from the road just opposite the Iron Bridge to that guango tree?—One hundred and ninety-six paces.

1734. Are you sure that 196 paces, or 296 paces; was any memorandum taken on your shirt or jacket?—Yes; I forget myself; it was 296 paces from the Iron Bridge to the guango tree; I took it myself on my gaiter.

1735. Was any memorandum also taken for you on your own dictation and report?—Yes; Mr. Williams made a memorandum of what I tell him; I read that memorandum.

1736. Have you got that memorandum?—Yes, I have got it.

1737. Where is it?—I got it in my pocket.

1738. Produce it then?—

Before the witness complied the Court is cleared for deliberation, and on being reopened, the witness is informed that the Court is not satisfied with the manner in which he is delivering his evidence as showing either inattention to the question put to him, or a want of proper respect to the Court. After being thus cautioned the witness produces the memorandum, and he is directed to read it out. This being done, the paper is marked I, signed and attached to the proceedings.

1739. Did you yourself actually pace and measure these distances?—Yes.

1740. Did you yourself actually measure the height of the logwood fence by yourself as well as the pieces lying cut off?—Yes.

1741. On that same day you did all you have just stated; did you go on towards Muirton?—Yes.

1742. Was Ensign Cullen with you at the same time?—Yes.

1743. While on the main road towards Muirton did you come to any road which branched off, just before the main road descends to a river, and before you reach Muirton on this side?—Yes.

1744. What was that road, and had you seen it before; and did you go up it on the day you are speaking of as being with Ensign Cullen?—Hayning-road; I had seen it before; I went up it with Ensign Cullen during martial law.

1745. And when since?—About last Monday.

It being now 4 p.m., the Court adjourns till 10 a.m., To-morrow, 10th instant.

Nineteenth Day, 10th January 1867.

On Thursday the 10th January 1867, at 10 a.m., the Court reassembles pursuant to adournment:—Present, the same Members as yesterday, and proceeds with the Examination in Chief of Corporal Hunter.

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1746. *By Prisoner.*] What do you mean "about last Monday," when did you return lately from Saint Thomas in the East?—I returned last week Tuesday, the Monday I mean was the day before that Tuesday.

1747. In going from the Iron Bridge side towards Muirton to which hand do you turn off the main road to go up the Hayning-road?—Left hand.

1748. About what distance is that turning into the Hayning-road from Muirton?—About two miles and a half.

1749. Do you know Grange Hill; is Grange Hill nearer to Muirton than the Hayning-road, or is Grange Hill further from Muirton than the Hayning-road; which is nearest to Muirton?—I have seen Grange Hill, though I have never been to it before the day I went there with Mr. Cullen and Mr. Williams. Grange Hill is nearer to Muirton than the turn off to Hayning.

1750. Does Grange Hill land line on the main road to Muirton, or not; can you see Grange Hill from that main road?—Grange Hill land does line on the main road; you can see Grange Hill from the main road, but not the houses, for the bush take up the houses.

1751. After you have passed by the Hayning-road and crossed the river, and gone some way along by the main road towards Muirton, do you come to any road or track which leads up to some breadfruit trees on Grange Hill; did you go there with Ensign Cullen?—Yes; there is a road up to the breadfruit trees; I went up there with Ensign Cullen and Mr. Williams.

1752. You say you went up the Hayning-road with Ensign Cullen: about how far did you go the other day with him up that road; did you take notice to see if there were any breadfruit trees there at all; did you see if there are any on the Hayning-road?—I go as far up as the turning to a house; there is no breadfruit tree on the road.

1753. About how far is it from the main road from the turning off to the breadfruit trees on Grange Hill on or near the Grange Hill road or track up which you went with Ensign Cullen; did you yourself measure the distance in paces and report it that day?—I measured it that day and reported it; it was 385 paces.

1754. Having passed the Hayning turning and the river, and gone along some way on the main road to Muirton and come to the Grange Hill turning,

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turning, of which you spoke; do you turn to the left hand or right hand to go up that track to the breadfruit trees?—To the left hand.

1755. At about what distance is that turning up to the breadfruit trees on the main road to Muirton itself?—About a mile and a half.

1756. Did you see any breadfruit trees at the end of that distance you mention; how many did you particularly notice on or near that end of the track. Did you measure and report the distance between those two breadfruit trees themselves which are close to each other at the end of distance mentioned?—There are two breadfruit trees; I measured and reported the distance between them; it is seven paces.

1757. Are the tops and branches of those two breadfruit trees separate from each other, or are they with each other, at the top part of the trees?—There is an opening; there is just a light touch between the two.

1758. Are they close to the track or not?—About one pace from the breadfruit tree is the track; one breadfruit tree is lower down than the other, and there is a track between the two trees.

1759. Were you ever with Ensign Cullen and Dr. Morris, and soldiers at or near those two breadfruit trees at or near the track on Grange Hill during martial law on any day when you were sent out from Muirton by Captain Hole with Ensign Cullen and Dr. Morris?—No; I never been on that track before; it was the first time I had ever been there when I went lately.

1760. What was the road which you did go when so sent out by Captain Hole with Ensign Cullen and Dr. Morris, and soldiers from Muirton during martial law?—The first time I went out was up the Hayning-road; I was sent to Hayning with Ensign Cullen and Dr Morris.

1761. Did you ever see a person by the name of Billey or William Gray shot by Dr. Morris, or by any soldier by his orders in the presence of Ensign Cullen at or near Muirton at all?—No; I never see anybody shot near Muirton.

1762. Were you at that time senior corporal on that march under Ensign Cullen?—Yes.

1763. Did you take notice when you were last at the Post-office how many doors there were belonging to the building which could open, and were open on the street or main road in front?—On the main road were three doors.

1764. Did you see the place where the word "Post-office" was put up on a board or some placard on the side in front?—Yes; going toward the Post-office centre door it is on the right hand.

1765. How many doors had the shop itself; to what did the other door belong?—There is one door to go into the shop; then another into the Post-office and cloth store, and there is another door to go into a little private place.

1766. Has that little place, you call a private place, a window or shutter opening at the end of the house towards the bridge?—No, it is all boarded up.

1767. Did you see any opening at the end, not side of the building towards the bridge; if so, to what room does it belong?—There is no opening at the end of the building, but when you get to the bridge you can see a door leading out towards the river, that door is at the back, not at the end of the building.

1768. Do you know the kitchen; where is it; is it or not directly at the back of the house, or is there any road between the shop and Post-office and that kitchen down to the river from the main road?—The kitchen is between the Post-office and the river; there is a road between the grass piece and the end of the shop, and that road leads down to the kitchen.

1769. *By Prosecutor.*] Where did you know Mr. Sinclair before you were a soldier?—I was going on a travel at one time, going from Kingston to St. Thomas-in-the-East; I met him at the Nineteen Mile Tavern with a horse, and he asked me to saddle his horse for him, and I did so, and that time I knew him.

1770. You say you went to look for a place for the men to stop at, at Golden Grove; who sent you; and did you get any letter to take?—Mr. Cullen sent me; I had no letter.

1771. Did you take your rifle with you to Golden Grove at that time?—Yes; I did take everything with me that I has.

1772. At what hour of the day did you arrive at Golden Grove?—When I got to the corner by the Iron Bridge where you turn to go to Golden Grove, I heard a clock strike, and I stood up and counted, it was nine o'clock.

1773. Did you meet or overtake any soldiers on the road to Golden Grove?—No; I was the first black soldier that ever was at Golden Grove at that day.

1774. How long after you were at Golden Grove did any other soldiers join you, or did you see any others at Golden Grove?—I can't say the time, but I saw some black soldiers there after me

1775. These black soldiers, then, did not go with you; do you know what regiment they belonged to?—They did not go with me, there was some after me which I could not tell; they belonged to the 1st West India Regiment.

1776. To whom did you report yourself on your arrival at Golden Grove?—I did not report myself to any one, but I see Mr. Cruickshanks and told him the circumstances under which I come.

1777. You say you pointed out to Mr. Cullen the place at which Dr. Morris got sick; what was the necessity for this; was not Mr. Cullen with Dr. Morris on that morning, 21st October 1865?—Yes, he was with Dr. Morris. The reason I showed Mr. Cullen was, he was not aware of the place, and I know it and showed it to him the way we come; I recall to his recollection that part we had come.

1778. How far is the turning called Quaa Way, where you say Dr. Morris took sick, from the Post-office?—About three miles and a half from the Post-office.

1779. Are you the same Corporal William Hunter who was examined before a court-martial, composed of these same members, for the trial of Ensign Cullen, in this room, a few weeks ago?—Yes.

1780. Did you ever go to Grange Hill; if so, who pointed out the property to you, and when first did you go there?—I go there with Mr. Cullen and Mr. Williams last day of last month; it was a Monday. An old man pointed it out, but I do not know his name. I know the property before, when it was working canes first, but I had not been up the road to it before; that is, the track up to it.

1781. Did you go over all the roads which run

run through the property, from any one part of it to any other part?—Yes; I go from a bread-fruit tree to a house, from there to a cocoa-nut tree.

1782. Did you see any two bread-fruit trees growing, one on one side and one on the other side of the road, through Grange Hill on to Manchioneal Bay, with cocoa-nut trees near?—I see a field of cocoa-nut trees after you pass the bread-fruit trees, coming from Hayning up that turning, but I did not go up to it.

1783. The question you are asked to answer is, whether you saw two bread-fruit trees on Grange Hill, one on one side and one on the other side of the road or track through Grange Hill and on to Manchioneal Bay?—The track is one pace from the bread-fruit tree. I don't know where the track goes; I only went to a house and then to a cocoa-nut tree.

1784. You have said you neither met nor overtook any soldiers on your way to Golden Grove that morning (21st October); did you meet or overtake any troops or volunteers of any sort?—Yes, I met some volunteers, not proper soldiers, on the bridge turning into the works at Golden Grove; there were about eight or nine men.

1785. You say you met about eight or nine volunteers on the bridge turning into the works at Golden Grove; on which side of the property, with regard to the post-office, is that bridge?—It is the post-office side of the property.

1786. Don't you pass the Golden Grove church in coming from the post-office, before you come to that bridge?—You pass the bridge before you come to the church.

1787. Did you know any of those volunteers; were they mounted or on foot, and were they moving or halted?—I do not know any of them; at that time they were mounted, and moving slowly, looking at the grass piece as they go along.

1788. On your arrival at Golden Grove, did you see any other volunteers or soldiers there?—There was some volunteers, but I cannot sure about the soldiers when I arrive there.

1789. What volunteers did you see there, on your arrival; how many; and did you know any of them at that time; how many were there?—I did not know them at that time. I do not know how many; there was two or three keeping sentry; but I do not know them that time.

1790. When examined at a court martial in this room on the trial of Ensign Cullen, in answer to the following question, "When you arrived at Golden Grove, did you find that the detachment of the 6th and Volunteers had arrived there," did you not on your oath answer, "I did"?—Yes; I recollect making that answer, that I did find volunteers—and the 6th there.

1791. *By Prisoner.*] Was the name of the old man you saw at Grange Hill, William Roswell, a little short man; did any one take a name down at the time?—Mr. Williams take the name down; it was about that name, something like "Roswell," but I not sure of the "William."

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1792. You are asked as to who pointed out the place on the occasion when you recently went down to Grange Hill with Ensign Cullen; did you see there Stephen Grant, the witness who came here to be examined about Billy Gray, and whereabouts did you see him, in these barracks first, and at Grange Hill afterwards; did you also see the Rev. Evan Jones, of Williamsfield, and where did you see him?—When we stop on the track a man on a mule came to us; he was on the main road; his name is Stephen Grant; I saw him in these barracks when he came to give evidence. I saw the Rev. Mr. Jones in the common of Hector's River.

1793. How far is that house you spoke of from the track; how far is that house from the cocoa-nut tree to which you went; who was with you when you went to the house and the cocoa-nut tree?—I do not know how far the house is from the track; I did not measure it that way; the house is 159 paces from the cocoa-nut tree. The driver of the carriage I was in and a woman went with me to those places.

1794. Between the house and the track is there any old building near a stream; how far is that old building from the track and that old building from the house: add the two distances?—I measure the distance from the bread-fruit trees to the old building; it is 65 paces: the house is 58 paces from the old buildings. It would take me a long time to add them.

1795. *By Court.*] On how many marches were you sent from Muirton, on which you returned the same day?—Only one day, when I came back the same day; that was the day I went to Hayning.

1796. Did you ever see anywhere any man or men shot on that march by any one?—No.

1797. By which road or track did you come back, the other day, from the bread-fruit trees on Grange Hill to the main road?—The same road I went up.

1798. Supposing yourself at the bread-fruit trees, do you know any other track to go to Muirton than going back the way you went to the main road, and following it to Muirton?—No, I know no other track or road to Muirton than the way I went back, and then by the main road.

1799. Where did you leave your carriage and begin to walk, when you went the other day to Grange Hill?—I left it on the main road, where the track goes to Grange Hill, about a mile after passing Williamsfield.

[The Witness withdraws.

Seventeenth Witness for Defence.

Ensign Francis James Cullen, 1st West India Regiment, being duly Sworn, is questioned by the Prisoner.

1800. *By Prisoner.*] Were you sent from Muirton by Captain Hole, on route thence by the Iron Bridge and the post-office, during martial law; and did you go, and on what day?—I was sent, and went on 21st October 1865.

1801. With whom did you go from Muirton to the post-office on that day; about how many men went with you, to the best of your knowledge?—I went with a detachment of the 1st West India Regiment, about 30 men under my command; and Assistant-Surgeon Morris was in medical charge.

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1802. Where

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1802. Where are some of those men now, to the best of your knowledge; are they still in the island?—No, they are in Africa; that is, the greater portion of them.

1803. About what time did you leave Muirton, and at about what time did you arrive at the post-office on that day, on that march?—I left Muirton about 5 or 5.30 a.m., and arrived about 9 a.m., I think, at the Iron Bridge.

1804. Are there some of those men who accompanied you now in the island, besides those of that same detachment who have left the island?—There are a few.

1805. On your route from Manchioneal to the post-office that day, did anything befall Dr. Morris, and whereabouts?—Yes, he got ill on the way, about a mile from the post-office.

1806. What was done with him on his arrival at the post-office; was he still sick then?—Yes, he was much worse when we got to the post-office; he was brought inside and placed on a trestle or table; table I think it was.

1807. Whereabouts was that table and stretcher or small bed you just now mentioned?—In a small apartment, a kind of a hall, as you stand at the post-office; it was to the left.

1808. You say to the left; explain as to the end of the building where that table or stretcher was?—I can only explain it by saying that it is to the left as you come out of the post-office, that it is at the end of the building, towards the bridge.

1809. Had he any attendance when he was in that room, to your knowledge; any relief?—He had an orderly, I think, a soldier; I recollect he was the hospital orderly, and he had some Florida water poured on his head.

1810. How did he remain, from the time when he arrived to the time when he left the post-office that day for Golden Grove?—He remained on his back, or lying down.

1811. Did he move at all that day to go to bathe in the river, to the best of your knowledge?—He did not.

1812. Did you ask for a cart, and for what purpose, and of whom did you ask; did you do all you could to get a cart or other vehicle?—I asked Manning, the postmaster, first for a buggy; he said he had none; and I subsequently asked him for a cart. This was for the purpose of bringing Dr. Morris on to Golden Grove.

1813. How did Dr. Morris eventually go on to Golden Grove; did he mount his horse without any assistance?—He went on horseback; he did not mount without assistance; he was obliged to be held on his horse.

1814. Did you make light of the request for a vehicle; give your version of what passed about a vehicle?—I first asked him for a buggy; he told me he had none. I pressed him to send for one to some of the planters' houses, and he told me that the rebels had smashed the buggies and carriages up, and that the remaining few had been sent to Morant Bay, with refugees.

1815. Did you see the condition in which Manning's shop was on that 21st October, the Saturday; were his goods in any quantity in the shop?—They were apparently untouched; the shop was crowded, full of goods.

1816. Did you at any time during martial law try to arrest Manning, in consequence of orders or information received during martial law?—I did on two occasions.

1817. To whom did you try to take him?—To Captain Hole.

1818. When Dr. Morris got to Golden Grove, how was he that day there?—He was very ill.

1819. Did you remain at Golden Grove the day after that Saturday?—Yes.

1820. At what part of Golden Grove were your quarters?—In the Great House.

1821. Were any prisoners brought in to you at the post-office on the Saturday, or were any shot that day at or near the post-office or Iron Bridge?—There were not.

1822. On the Saturday, on your arrival at the post-office, did you give any orders to Corporal Hunter, and did you see him go to obey those orders; in what direction did he go upon your order?—About a quarter of an hour after my arrival at the post-office, I sent on Corporal Hunter and some men, 10 or 12, to Golden Grove; I saw them go myself in that direction.

1823. What was the cause of your giving that order to Corporal Hunter on the Saturday?—It was in consequence of a report I received from a person returning from Morant Bay, who told me the troops were coming on to Golden Grove, and intended to stay there; the person who gave me this information was a rebel who had been flogged and was returning home to his own place.

1824. At about what part of the road on that route did you meet this person you speak of as flogged?—I met him opposite the post-office.

1825. About what hour, as near as you can remember, did you direct Corporal Hunter to go on before you from the post-office to Golden Grove?—It may have been about a quarter or half-past nine a.m.

1826. After you had given Hunter your orders to go on to Golden Grove, and he had gone, did you receive any orders at the post-office from Lieutenant Adcock, on that same Saturday at the post-office?—I did, through two volunteers, Mr. Berry being one of them.

1827. Did you obey that order from Lieutenant Adcock?—I did.

1828. At about what time on that Saturday did you arrive at Golden Grove quarters?—A little after two p.m., that is to the best of my knowledge, as I had no watch.

1829. When you got there, whom did you go with, and whom did you find then at Golden Grove on your arrival?—I found the volunteers there, a few of the 6th Regiment, and Lieutenant Adcock. I reported myself to Lieutenant Adcock, and I saw my own men, Corporal Hunter, and the men I had sent on previously.

1830. When you left the post-office to obey Lieutenant Adcock's order, who went with you from the post-office that day to Golden Grove?—The remainder of the detachment and Dr. Morris.

1831. Who was the officer in command at Golden Grove on the Sunday during the middle part of that day, in the absence of Lieutenant Adcock?—I was.

1832. Were any prisoners ever brought by a volunteer, stated to be a Mr. Brooks, on that Sunday, and reported to you during Lieutenant Adcock's absence; to the best of your belief, who brought prisoners, if any were brought in that Sunday?—Prisoners were never brought to me by volunteers at any time. If any prisoners were brought in that Sunday, which I think there were, they were handed over to me by a Maroon captain, named Mendes. I recollect that

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that same Maroon bringing in to Golden Grove 15 or 20 prisoners, and giving them into my charge. I am not positive whether that was on the Sunday, though I think it was, or the following day; they were given over to me in the absence of Lieutenant Adcock.

1833. Were you during martial law stationed at Muirton, before you came on to Golden Grove, and were you sent out by Captain Hole, in company with Dr. Morris and Corporal Hunter?—I was.

1834. In obeying that order from Captain Hole, did you go anywhere, and where; and on your return did you report where you had been to that day?—I obeyed, and went to a place called Hayning on the 18th October 1865; I reported where I had been on my return.

1835. Did Assistant Surgeon Morris go that day with you, as well as Corporal Hunter?—He did.

1836. Was the place where you did go to that day the place which you were at first ordered by Captain Hole to go to?—It was not; I was ordered to a place called Friendship, and I mistook the way.

1837. Have you recently been on the road to Hayning, the same road that you say you went to on the 18th October, in martial law, and if so, state the day?—I have been there recently, I think on the 31st December last.

1838. Did you take means the other day to assure yourself that that was the road you took and the place you went to on the 18th October?—I did; I went to see the locality.

1839. So far as you can do so, shortly state what sort or nature of road this Hayning road is?—It is apparently a mountain road, leading off the main road.

1840. Did you look along this road to see if there were any bread-fruit trees, or two peculiarly-placed bread-fruit trees; were there any that you could or did see?—I saw no bread-fruit trees.

1841. Did you take any plan of the locality, and, to the best of your belief, is it substantially accurate; have you got it?—I have a rough sketch in my pocket which I took; I do not say it is accurate, as I took it partly from memory, and when I visited the place.

1842. Will you produce that plan, so as to give an idea of the locality?—

(Witness complies, and explains that the plan is not drawn to scale, but is merely an eye sketch. *The Plan is marked* (*K.*), *signed, and attached to the Proceedings.*)

1843. On going down the road towards Muirton, from this side of the country, the other day, did you come to a road leading out of the main road, just before you come to a river, and before you came to a place called Grange Hill?—Yes; that same road to Hayning.

1844. Did you stop at that turning, and did you go up that road towards Hayning, driving or walking. Who were with you?—The carriage stopped on the main road, and I walked up towards Hayning with Mr. Williams, Corporal Hunter, and the driver of the carriage.

1845. Did anything then occur to impress it upon your memory that this road to Hayning was the road which you had gone to and taken on the 18th October during martial law?—Yes; there was a circumstance occurred on the way which recalled it to memory. I met a woman who recognised me, and said she had seen me there on a Wednesday during martial law.

1846. State who were present when that occurrence took place?—Mr. Williams, Corporal Hunter, and the driver of the carriage.

1847. As a fact, did she mention any circumstances referring to you, yourself, and to Assistant Surgeon Morris, as occurring that day on that road?—She did.

1848. Did you come down back from that road to the main road that day?—I did; returned by the same road.

1849. As soon as you came down to the main road that day, did you immediately cross anything in going over towards Muirton?—I crossed a river, at the bottom of the hill, which I have by mistake called Hector's River in my rough sketch.

1850. In proceeding towards Muirton, on the main road, and after crossing the river, did you come to and stop at another turning some way on?—I did, on a road leading to Grange Hill; this, I mean, was on the 31st December last.

1851. What distance was it from that turning out of this main road up to some bread-fruit trees where you went; do you know that it was paced?—I know it was paced; 396 paces, as well as I recollect.

1852. Did you recognise—do you know some persons who came up at the same time when you were at Grange Hill?—I know a clergyman, a Mr. Jones, who came there.

1853. Did you see a man on a mule?—I did; I found his name was Stephen Grant, a man on the prosecution who had been here.

1854. How many bread-fruit trees did you particularly take notice of at Grange Hill, when you went there the other day; do they correspond with the two trees marked in your sketch?—I noticed two bread-fruit trees; they correspond with those in my sketch.

1855. Not far from those two bread-fruit trees did you notice any old building, stonework, or house?—Yes, I did, a short way from those trees.

1856. To the best of your knowledge and belief, did you, on this 18th of October, during martial law, go on that track or near to those bread-fruit trees by that track, or were you there at all before you went there the other day?—I was not, to the best of my knowledge and belief.

1857. Was any person of the name of Billy or William Gray shot in your presence or to your knowledge at or near Grange Hill; if you had known this or seen it, would it have been your duty to report it to Captain Hole?—There was not a man of that name shot in my presence on Grange Hill; and had I known of it, I should certainly have reported it to Captain Hole.

1858. Do you remember Assistant Surgeon Morris's revolver lying in two parts at Muirton, and to the best of your belief had he a revolver on that day (*i.e.*, 18th October 1865) on the march to Hayning?—I recollect his revolver lying in two pieces since the day he arrived at Muirton; the pin was lost; he had no revolver in his possession on the march on that 18th October.

1859. Are you aware what ultimately became of that revolver?—I am. I heard Dr. Morris ask Mr. Bourne to take the revolver to England for repairs, and it was not there after he left.

1860. Did you lose sight of Dr. Morris on that march on the 18th October; did you go away from

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from the main road at all from Muirton till you came to the turning to the road to Hayning that same day?—I did not lose sight of Dr. Morris on that day; and we marched from Muirton by the main road till we came to the turning up to Hayning; that is, we did not leave the main road till we came to that turning.

1861. Did Assistant Surgeon Morris write to you from Morant Bay, and request certain witnesses to be retained, and who were not, but sent to Africa; a list of whose names were sent in by him to you?—He did. I showed the list to the Acting Adjutant of the left wing of the 1st West India Regiment, and requested him to send the names in to the orderly room in order to have them retained.

1862. To the best of your recollection did you, on Sunday, 22nd October 1865, ever give a constable of the name of James Sproul a pass after he had handed over thirty prisoners to you, brought in by Volunteer Brooks, Sproul, and other constables, at Golden Grove?—I have not the slightest recollection of the man, or of giving a pass at all.

1863. Could Assistant Surgeon Morris have possibly by any means himself have ordered three men to be shot at the Iron Bridge on that Saturday, 21st October 1865, unknown to you, at or near the post-office; or could he have possibly ordered, to the best of your belief, William Gray to have been shot, as alleged, unknown to you, and on the 18th October 1865?—At the post-office I consider Dr. Morris to have been incapable of giving any order. He could not have given any order to shoot William Gray, on the 18th October 1865, unknown to me.

1864. Did Corporal Hunter, in your presence, when he went down with you on the 31st December last, make several measurements of distances on the road from Manning's shop down on the Holland Bay-road?—He did, in my presence.

1865. Did Dr. Morris ever move out of the room at the post-office from the time he went in until he came out to leave, and was it not on the assertion that you had procured him a vehicle that Dr. Morris got up from where he was lying down?—He did not move out from the time he arrived till he left the post office to go to Golden Grove. I cannot say it was on the assertion that I had procured a vehicle that he got up; but I told him that I had tried to get a vehicle to take him on.

1866. *By Prosecutor.*] What were your orders as to waiting at, or acting or leaving the post-office?—My orders were to proceed to the post-office to join a detachment under Lieutenant Adcock, and to place myself under his command; those were all the orders I got.

1867. Did those orders specify the place at which you were to join or be met by Lieutenant Adcock, and was Lieutenant Adcock's name mentioned to you before you left Muirton?—The orders specified the place I was to join the detachment; but Lieutenant Adcock's name was not mentioned, as far as I recollect.

1868. You have said the orders specified the place you were to join the detachment, what was that place?—I answered it before; at the post-office.

1869. Did you see Corporal Hunter and the 10 or 12 men you ordered to go with him from the post-office to Golden Grove on the Saturday morning, leave together?—I did.

1870. Were all those men furnished with rifles and all the other articles usually carried by soldiers?—They took their rifles and other things, to the best of my knowledge.

1871. What day did you first arrive at Muirton?—I think it was on the 15th October.

[It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, the 11th instant.

Twentieth Day, 11th January 1867.

On Friday, the 11th of January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment: Present, the same Members as yesterday, and proceeds with the Cross-examination of Ensign Cullen.

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1872. *By Prosecutor.*] What was your reason for sending an advance guard on to Golden Grove?—It was from the reports I heard from persons passing by. I heard that Lieutenant Adcock was coming there.

1873. Is there a road or path of any sort between the two bread-fruit trees on Grange Hill?—Not that I am aware of.

1874. From whom did you receive the orders to arrest Manning?—I acted on my own responsibility, from written information I received from persons in the district.

1875. *By Prisoner.*] You were asked about a road through the two bread-fruit trees; did you go beyond the two bread-fruit trees towards the old building at all, or keep only on one side of them, on the track of which you had gone up from the main road at Grange Hill?—I kept only on the side; I did not go beyond the bread-fruit trees.

1876. *By Court.*] Did Dr. Morris receive any medical attendance or treatment at Golden Grove on Saturday or Sunday, 21st and 22nd October 1865?—I saw him receive no medical treatment.

1877. Were the orders you received through the Volunteers at the post-office, directing you to go on to Golden Grove, written or verbal?—I think they were written orders, and in pencil.

1878. When did you discover that you had taken the wrong direction to the place you were ordered on the 18th October 1865; and when you discovered the mistake, why did you not then obey the orders you had received?—I did not discover the mistake till I had got to the Hayning-road. When I heard where Friendship was, I considered it too far to go there that day.

1879. Then why did you go on to Hayning?—I merely went on there to finish the day; I went

went to see the negro houses there, and at Jericho and Scott's Run.

1880. Can you explain how you came to mistake the road to Friendship on the 18th October 1865, so as to go in almost an opposite direction to that place?—I went to Hayning by the direction of persons who were staying at Muirton; by "direction," I mean what the persons told me as to the way to Friendship.

1881. Do you remember what time you set out on the day you went to Hayning?—I cannot speak exactly as to the hour; it was early, say 8 a.m.; but perhaps it was earlier, perhaps later.

1882. About what time did you return from Hayning?—To the best of my knowledge about 3.30 or 4 p.m.

1883. How far is Hayning from Muirton?—I should say about three miles.

1884. If you wished to take the shortest road from Muirton to Grange Hill, which road would you take; can you describe it?—I cannot describe it; I know no other road but the one I recently went by up to the bread-fruit trees; if that road were followed from the bread-fruit trees, I imagine it would lead to the main road, but I do not know it.

1885. Did you go into any negro houses, or did you detach any of your men to go into negro houses, or did any go before you went up the Hayning track?—None that I am aware of; I detached no men on that march anywhere.

1886. Do you know the name of Deeling or Ditton as a negro village?—No; I do not.

1887. Do you remember if you went to Scott's Run on your way up to Hayning, or in coming back from Hayning?—I cannot say whether I went there returning or going.

1888. Was any one shot that day, 18th October 1865, by any of your party, anywhere?—Not that I am aware of; it never came to my knowledge. Ensign *F. J. Cullen.* 11 January 1867.

1889. It has been stated that there are several mounds in the grass-piece at Duckenfield. When you were last in St. Thomas-in-the-East did you observe any of these mounds?—I did not; I did not think about it; I did not go into the grass-piece.

1890. When you sent Corporal Hunter and party on to Golden Grove, on the 21st October 1865, what was your object, and what orders did you give him?—My object in doing so was to make arrangements for quarters for the men, as I knew that Lieutenant Adcock would remain there from the report I received from that same person coming from Morant Bay I have already spoken of. The orders I gave Corporal Hunter were, to do the best he could for the men. The person I allude to was a peasant, a countryman, who had been flogged; I do not know his name.

1891. Did your men straggle on the march on the 18th of October 1865?—No, they did not; they kept pretty well together.

1892. What are the names of the soldiers who were in immediate attendance on Dr. Morris at the Post-office on the 21st October 1865, and where are they?—One was the hospital orderly, named Thomas, who is now in Africa, and the other is Corporal Maddix, then a private; he is here in Jamaica.

1893. You have said that Dr. Morris was brought in and placed on a table at the Post-office, will you explain what you mean?—I mean he was almost exhausted, and was held by the arms.

[The Witness withdraws.

Eighteenth Witness for Defence.

JAMES HARRISON, Planter, residing at Hordley Estate, St. Thomas-in-the-East, being duly Sworn, is questioned by the Prisoner.

1894. *By Prisoner.*] STATE your position in St. Thomas-in-the-East in October 1865, and since?—I was manager of Hordley Estate, and attorney for Amity Hall Estate, then and now; I am also a justice of the peace for St. Thomas-in-the-East. *J. Harrison.*

1895. Were you examined as a witness on the trial of Ensign Cullen; did you go with Lieutenant Adcock and others on a route from Golden Grove towards the Iron Bridge, and on towards Amity Hall, &c.; at about what hour, and on what morning did you so do?—Yes, I was a witness on Ensign Cullen's trial. I went on that route on Sunday, 22nd October 1865; we left Golden Grove about 7 a.m.

1896. About how many troops went with you on that route?—Between 40 and 50 persons, volunteers and regulars.

1897. Do you know the Holland Bay-road, a road in question on this charge?—Yes.

1898. Tell, as nearly as you can, what you remember about any mistake of some of the men going down in a wrong direction when you reached the Post-office, or Iron Bridge?—I was appointed as guide by Captain Adcock, and during a slight stoppage at the bridge a few of the men went down on the eastern road towards Holland Bay, beyond the Suspension Bridge. I asked Captain Adcock if he was going on to Holland Estate; he said, "No." I then said, "Those people are going on the wrong road;" and there was a regular shout calling them back.

1899. Do you know a bamboo draw-rail on this Holland Bay-road, in or near the logwood fence to a grass-piece. Have you measured the distance from a spot on the road opposite the bridge to that bamboo draw-rail of the grass piece?—I know the bamboo draw-rail; I have measured from Manning's shop to the draw-rail and found it about 80 paces.

1900. Can you give some idea of the extent, down which some of the troops went, down that Holland Bay-road that Sunday morning, to the best of your knowledge and belief?—They went down farther than that; farther than the 80 paces, I mean, though I did not particularly notice it.

1901. Did you on that morning see or hear of any dead bodies lying at or near to that bamboo draw-rail, or at or near the Iron Bridge; or did any smell of dead bodies thereabouts attract your attention?—I heard of no one being killed or dead. I saw no dead bodies, nor perceived any bad smell.

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1902. Do you know Thomas Wedderburn, Zachariah Bayley, William Huntingdon, David Thomas, Charles Robinson, Richard Taylor, Natty Wilkie, John Wright, William Barclay, and Harriett Warren. Did you see any of them at or near the Post-offie, or Iron Bridge, or the Amity Hall-road that Sunday morning, with hoes, or shovels, or otherwise?—I know all the persons named except Barclay, whom I do not know by that name; they are all labourers with me at Amity Hall; I did not see any of them that Sunday morning.

1903. Had you any occasion that morning to look into that grass-piece as you passed by the Post-office or the road?—I missed a young black horse of mine, and I stopped at the cotton tree, peering over the fence on horseback to see if I could see him. It was that stoppage of mine that caused the confusion, when some of the party went on the Holland Bay-road; and, if I remember rightly, I was reprimanded by Captain Adcock for the mistake of those who went wrong, as I ought to have been in the front; and I distinctly remember his ordering me to keep in front for the future, and I did so.

1904. Did you see any crows about there; would you have expected to see crows about there if bodies killed and exposed on the preceding day and night had then been lying near the Holland Bay-road at the bamboo draw-rail?—I did not see any crows; they would have been sure to be there, especially if there had been blood spilt, a few hours after.

1905. If you had seen any such persons as just above named, would you have done anything, believing it to be your duty, in these times?—Individually, I would not have troubled them; but no doubt they would have been arrested; I would have been sure to have stopped and spoken to them, especially to Wright and Wedderburn, as they were the two principal men on Amity Hall Estate.

1906. Can you tell how that logwood fence was in October 1865; and state any difference then, from last year or this year?—In October 1865, on 22nd of that month, it was about 12 feet high; it was cut down about August or September last year, 1866, and it has recently been cut again.

1907. Do you know the nature of the soil about Duckenfield, and that part of St. Thomas-in-the-East. Do you know the nature of the soil in which Mr. Hire was buried. Has there been any flood of the river between October 1865, and September 1866?

> Before this question was replied to, the court is cleared for deliberation; and being re-opened, the witness is directed to answer it.

Witness.] Duckenfield has a variety of soils, but the grass-piece, in which three bodies were buried, is an alluvial brick mould, getting more and more sandy the deeper it is dug. The soil in which Mr. Hire is buried, was soil carried up from the plats, and is much the same as that in the grass-piece; the natural soil round Amity Hall-house, where Mr. Hire was buried, is clay mixed with iron, oxide of iron; it must be a very high flood to overflow that land of Duckenfield, and there has been no such flood for many years now.

1908. About what hour did the body of men return to Golden Grove on the Sunday, from the route on which they started in the morning?—It was a little after 4 p.m.

1909. About what hour did you arrive at Golden Grove, if there, on the Saturday, immediately before the Sunday you spoke of?—About 2 p.m.

1910. About what time did Ensign Cullen arrive on that Saturday at Golden Grove, from the direction of the Post-office? Were any troopers sent out by Lieutenant Adcock from Golden Grove for him that Saturday?—On our arrival at Golden Grove, two troopers, Berry and Brandon, I believe, were sent on by Captain Adcock to call in the soldiers, who were expected to be at the Iron Bridge. Their orders were to rendezvous at the bridge; but on my informing him that there were no buildings there, and that they would have to encamp, he (Captain Adcock) sent on for them to come to Golden Grove, where they could be stationed. Ensign Cullen arrived about an hour after us; that, is about 3 p.m.

1911. On Ensign Cullen's arrival, did you see Dr. Morris at Golden Grove; and how did he appear to be that Saturday afternoon or evening?—I saw Dr. Morris a few moments after I saw Ensign Cullen, he was then on horseback; the next time I had a glimpse of him, the same afternoon, he was lying down on a sofa, quite still, and apparently, from the distance where I was, insensible; it was stated among us that he was very ill.

1912. Do you know if any stragglers came into Golden Grove after Ensign Cullen arrived there that day?—Yes; just before dark a few came in; they came in past the church, in the direction from the Post-office; they were black soldiers, and apparently belonged to the same regiment as the others; I saw no difference.

1913. In St. Thomas-in-the-East, have you any considerable communication with labourers and people of the lower classes; when first did you hear of any rumour of the shooting of the three men now in question?—I have a great deal of communication with such people; I first heard of this shooting in the month of March, or thereabouts, through the newspapers and Mr. Chisholm of Golden Grove; I never heard a word from a negro.

1914. Are you aware of the roving character of the labourers on the estates?—Yes; they are here to-day and there to-morrow; especially the younger ones; those from 14 years of age and upwards.

1915. Do you know a Mr. Alfred Brooks; what do you know of him generally?—He was a book-keeper of mine several years ago; and I know nothing good of him.

1916. *By Prosecutor.*] Were you one of the persons, who with your family, had to fly from St. Thomas-in-the-East, in consequence of the disturbances of October 1865?—Yes.

1917. Do you know of a meeting-house on Amity Hall having been burnt on the Sunday morning, 22nd October 1865?—Yes, I saw a large house, said to be a school-house, burnt down; I suppose that is what is meant, a meeting-house and a school-house.

1918. After the burning of the meeting and school-house, in what direction did the detachment or body of men go, and did they return by the same road that day?—No; they went from there up to the Top-house, Amity Hall, then through Hordly, Wheelerfield, Bachelors' Hall, Plantain Garden River Estate, Winchester Estate, and thence to Golden Grove, making a circuit.

1919. Who burnt the meeting and school-house down;

down; that is, whose party, or by what direction?—Captain Adcock directed it.

1920. The cotton tree you speak of, at or near which you looked for your black horse, is rather more on the Golden Grove side of Manning's shop, is it not; that is nearly opposite the shop, but more to the Golden Grove side?—It is in a westerly direction of the shop, Golden Grove way.

1921. Did you yourself go any way down the Holland Bay-road?—I went barely to the blacksmith's shop.

1922. Do you happen to remember who went down the wrong road; the Holland Bay-road?—No.

1923. Is that logwood fence which you say was 12 feet high on the 22nd October 1865, the same you looked through or over for your black horse?—The same one.

1924. Did the usual "May Seasons" fall in the year 1866?—It rained, but it was light; there was no overflow of the river.

1925. Did those persons who went down the Holland Bay-road return in response to the shout which you say was raised?—I presume they did, but I was hurried over the bridge by Captain Adcock, and did not stop to see.

1926. About what hour of the day was the school and meeting-house burnt?—It could not have been later than 9 a.m., about 8.30 a.m., I should say.

1927. Had these stragglers you speak of, as coming into Golden Grove the Saturday evening, their rifles and other travelling appointments of soldiers?—I can't say, I noticed their rifles, and I can't say; I did not; they had on their accoutrements when I saw them.

1928. Is the Amity Hall Great House built on a hill?—Yes.

1929. What time of day did you leave Morant Bay on the Saturday?—Just after daylight; we were getting ready before break of day, and we started just afterwards.

1930. *By Prisoner.*] How were you mounted on that Sunday morning (on a large or small horse) when you looked into that grass-piece?—A moderate sized horse; one close upon 15 hands.

1931. *By Court.*] At what place and time was it that you informed Lieutenant Adcock there was no accommodation for troops at the Iron Bridge?—By the shops in Golden Grove; it must have been just before 2 p.m., on the day of our arrival there. *J. Harrison.* 11 January 1867.

1932. Did Lieutenant Adcock and Captain Ford remain with the party the whole day, on the Sunday, and return with it?—Yes; they both did.

1933. Did you meet any Maroons on that March, on Sunday, October 22nd; if so, where; did you know any of them?—We met several Maroons with a large batch of prisoners, at Bachelors' Hall, in charge of a Maroon captain, named Mendes; several of the prisoners were flogged there, and the women were sent to Bath; this must have been between 1 and 2 o'clock. Captain Mendes went off with the women in the direction of his own residence, or Bath; they both lie in the same direction.

1934. Did Captain Mendes any time that afternoon come into Golden Grove?—I do not remember having seen him.

1935. Are Golden Grove and Bath in the same direction from Bachelors' Hall?—They are quite extreme points.

1936. When you got back to Golden Grove, 22nd October 1865, did you find whether prisoners had been brought in during your absence; do you know where from?—I could hardly say whether there had been or not, as there were a large body of prisoners left there in the morning; but if there had been, they would have been kept at the steps of the Great House, for Captain Adcock, as he always sent those for trivial offences to one building, and those charged with more serious offences to another. I did not see any at the steps when I came in that day. Prisoners for trivial offences were placed in the Mill-house; the others under the Great House to be guarded.

1937. What is the distance from Bachelors' Hall to Golden Grove?—The way we went is very nearly four miles; by the nearest road from the spot where we were, the cotton tree on the common, it is about three miles.

[The Witness withdraws.

Nineteenth Witness for Defence.

ALEXANDER CHISHOLM, Planter, residing at Golden Grove, being duly Sworn, is questioned by the Prisoner.

1938. *By Prisoner.*] How long have you been the overseer of Golden Grove?—Nearly seven years. *A. Chisholm.*

1939. Did you arrive at Golden Grove on a Saturday during martial law, with Lieutenant Adcock, Mr. Harrison, and others from the direction of Morant Bay?—Yes; Saturday, 21st October 1865.

1940. On that Saturday afternoon and evening did you see Dr. Morris at Golden Grove quarters; how did he appear to be on that day, and how on the Sunday, if you saw him then, too?—I saw him on the Saturday afternoon when he arrived, when he was complaining of being sick, very sick; Saturday night and Sunday night he was quite sick; I had to give up my own bed to Dr. Morris.

1941. At that time were you residing in the Great House quarters, and not in the usual barracks; in which building was the room in which your bed was?—I was in the Great House, not in the barracks.

1942. Do you generally reside in the barracks or in the Great House?—Generally I reside in the barracks, but at that time they were all smashed up.

1943. Did you give up your room in the barracks to any one, if so, to whom, and why, about that same time?—I gave up my room in the barracks to volunteers; such as were sick got the best rooms, mine being the best room at the time.

1944. Do you know a Mr. Alfred Brooks, a book-keeper at Golden Grove in 1865; what was the matter with him then, and where was he; what do you know of him generally?—I know him; he was then quite sick occupying my room, Saturday night and Sunday night, and the whole of Sunday; I know him for sometime, and I had him as book-keeper, and had to discharge him for

A. Chisholm. for neglect of his duty, and I could not believe a word he said about the work.

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1945. Do you know of your own knowledge whether application was on that Sunday made to Dr. Morris to attend Mr. Brooks?—I do not know that of my own knowledge.

1946. Have you a book-keeper of the name of Wilson, James or John Wilson; is he ill or well now; was he on Golden Grove during martial law?—I have a book-keeper named James Wilson; he is well now, but he has been sick; he was at Golden Grove during martial law.

1947. In entering those barracks, to what apartment do you come first from the open square up to the steps?—The open hall you enter as soon as you come into the barracks.

1948. Upon that open hall are there any bed rooms in those barracks or overseer's house?—Yes; there are four bed rooms.

1949. As you come up the steps, go into the hall, and go on to your dining room towards the church way, are the bed rooms on the left or right hand of that hall?—In the overseer's house the bed rooms are to your left hand, as you go in.

1950. In which of those bed rooms on the left hand as you enter was the room in which Mr. Brooks was; was it the one just opposite the steps, or the one next to the dining room in the overseer's house, or which?—It was the one next to the dining room, not the one next the steps.

1951. Can any one in that bed room be heard in the hall, or in either of the other bed rooms on that same hall; can he come out of that room without going into that hall, or go down the steps without going into the hall?—Any one could be heard; there is only a thin wall, and you could not turn without being heard; you must come through the hall before you go down the steps.

1952. As you enter that hall, what is there on your right hand; is that right side open or closed; and can you see from that side out upon the open square or not?—On the right hand side it is quite open; no one could go backwards or forward on the square without being seen from the hall.

1953. Did you hear on that Saturday of any three men being shot on that Saturday, the 21st October, or when first, if at all, did you hear of any such report?—I never heard of it at the time; it was about the 28th March, when I came to Kingston, I first heard of it.

1954. Were you present at the exhumation of the remains of the late Mr. Hire of Amity Hall; when was it, describe shortly as to the grave and the remains, as well as you can?

The Prosecutor objects to this question on the following grounds:—

The Prosecutor objects to any line of examination which seeks to establish evidence not of facts, but of comparisons of bodies or other objects; it cannot be said to be scientific opinions, and such a course of evidence is unfair, as not enabling the prosecutor to meet it in any way, and is not pertinent to the issue; moreover, any comparison such as is sought by the evidence now intended to be given must depend upon such numerous contingencies as to make it uncertain and misleading; the question is not objected to, so far as the fact of the opening of a grave goes, but it is where it seeks a description of the state of the body found in it.

The Prisoner replies:—

Pursuing a course pursued by the prosecutor on one or two instances, I submit the matter entirely to the Court most respectfully; I shall be perfectly satisfied with its decision; my only object is to get out the facts, and that then medical men may be called to express their opinion in the usual way on the whole of the facts proved; there can be a description, which in truth is only a statement of a fact on oath.

The Prosecutor rejoins:—

The illegality of the course of evidence now sought to be given, to the prosecutor is made manifest by the prisoner's reply to the objection of the prosecutor; this witness is asked to speak of observations made on a dead body, upon which medical men are to be called by the prisoner to give scientific evidence; the prosecutor in the present stage of the proceedings being deprived of having evidence of other and contrary opinions.

The Court is cleared for deliberation, and decides that the last portion of the question which calls for a description of the remains mentioned is inadmissible, inasmuch as the witness is not an expert, and that scientific knowledge is necessary for the description of the facts.

The Court is re-opened, this decision announced, and the witness directed to answer so much of the question as does not bear on any description of the human remains found in the grave.

Witness.] I was at the exhuming of the body of Mr. Hire on Tuesday, 8th instant; the grave was about from 14 to 18 inches deep.

1955. Did you see any hair or clothes on that body at the time of exhumation; did you perceive any offensive smell on the exhumation of the body; confine yourself to the facts solely?—I saw hair, his whiskers were quite sound, the hair on the head not so much so; he had a flannel, a merino under-shirt on, and a black waistcoat, the buttons of the latter I took off myself; one part of the waistcoat, the front part, was pretty sound, the back part not so much so; I did perceive a smell, it was very offensive.

1956. Did you see that body in any coffin at the time of exhumation; did you put him in a coffin afterwards?—I did not see any coffin, but we put him in one afterwards.

1957. Was the body found flat or level, or was it bent up in any way?—It was all straight out, except the head, which was bent on one side, to the north, and his arms were sticking up; they had not been laid flat.

1958. Was Mr. Hire a man, in his lifetime, of much hair on his head, or was he partly or rather bald?—He was rather bald on the front, but he had plenty of hair on the back of his head.

1959. Did you on exhumation see, or expect to see, any trowsers on the body of Mr. Hire; was there a reason?—There were no trowsers on Mr. Hire's body when exhumed; the reason I cannot, of my own knowledge, tell, but I did not expect to see any.

1960. When, to the best of your knowledge, was Mr. Hire killed; was he alive on the 21st or 22nd of October 1865?—On the night of the 12th or morning of the 13th October 1865.

1961. Is or is not the Mr. Alfred Brooks you mentioned the only book-keeper of the name of Brooks who was employed as a book-keeper at that

that time by you at Golden Grove; is he or not the only person to your knowledge of the name of Brooks in the volunteers at Golden Grove on the 21st and 22nd October 1865?—He was the only one of the name among the volunteers. I had no other book-keeper of that name.

1962. *By Prosecutor.*] How did you discharge Brooks, by word of mouth or by letter?—By letter.

1963. When did Brooks go into your employment, and when did he leave?—He came on the 1st, and I discharged him on the 29th October 1865.

1964. Did you see Brooks on Sunday, 22nd October; if so, tell when you saw him?—I saw him during the day, but I cannot say what hour it was.

1965. Is the place where Mr. Hire was buried on the top of a hill or on flat lowland?—It was not on the top of a hill nor yet on the flat; it was on the descent.

1966. Is it near the house?—Yes.

1967. Do you know a man named Speed from Holland Bay?—Yes, I know Speed.

1968. Did you leave Golden Grove house or barracks at any time during that Sunday, the 22nd of October 1865?—Yes.

1969. Do you know men named James Sproul, Allan Bignall, Bevis Hunter, Thomas Brown, John Hamilton, living at Holland Estate or Holland Bay?—I know John Hamilton, Sproul, and Hunter.

1970. Did you see any of the men you say you know at Golden Grove on Sunday, the 22nd October 1865?—No, I did not.

1971. You say you left Golden Grove barracks on the Sunday; tell where you went to and how long you were away?—I went as far as the Iron Bridge; I do not remember how long I was away, but not very long.

1972. Did you see any prisoners brought into Golden Grove on Sunday, the 22nd October 1865, from the Iron Bridge side?—No; I have no recollection of seeing any from that side. Prisoners came in from Duckenfield, but not from that side that I know at all.

1973. How many prisoners came in from Duckenfield, as you say; and where were you when you saw them come in to Golden Grove?—I was on the steps at Golden Grove, but I cannot say how many, as they were brought in at different times by constables. I think I may have seen about four at first, and afterwards as many more.

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1974. What time of day did you go out to the Iron Bridge on that Sunday?—I really do not remember at what hour; it was during the forenoon.

1975. Who brought the prisoners that you saw come in?—I cannot say the names of the constables; I do not know their names.

1976. Was it before or after breakfast that you went to the Iron Bridge?—After breakfast; we had breakfast between six and seven o'clock that morning.

1977. How long after breakfast do you think it was?—I really do not remember how long. I only remember that it was before 12 o'clock.

1978. Did you ever go to the place where the bodies of the three men were taken from?—Yes.

1979. How often did you go, and when?—Several times; but only once that I am quite sure about the date, and that I think was the 28th March last.

1980. Did you on any of your visits see a hoe at or near the place?—No.

1981. Did you have to fly for your life in consequence of the disturbances in St. Thomas-in-the-East, in October 1865, and to remain in the woods?—Yes.

1982. Did you ever go back to Golden Grove from the time you fled until the 21st October 1865?—Yes.

1983. Try and remember if you did not see a hoe on one of your visits to the grave, and if you did not throw away the hoe into the thick bamboos or river?—I never did.

1984. You say you went back to Golden Grove before the 21st October 1865; state when you did?—I had to fly on the afternoon of the 12th, and remained in the bush for two days, and then on the Saturday, the 14th, I heard the soldiers were come for protection, and I went through Golden Grove and on to Kingston, and there I remained till the 21st, when I returned to Golden Grove again.

[The Witness withdraws.

It being now 4 p.m. the Court adjourns till 9 a.m. To-morrow, the 12th instant.

Twenty-first Day, 12th January 1867.

On Saturday, the 12th of January 1867, at 9 a.m., the Court re-assembles pursuant to adjournment:—Present, the same Members as yesterday.

Twentieth Witness for Defence.

John Robson Watson, of Her Majesty's Customs, Port Antonio, being duly Sworn, is questioned by the Prisoner.

1985. *By Prisoner.*] Are you the same person who was examined on the court martial about Ensign Cullen a short time back?—I am.

1986. Did you, with Lieutenant Adcock and others, go from Golden Grove on a route round the district during martial law; what day of the week and month was that?—I did; on the Sunday, the 21st October.

1987. On what day did you arrive at Golden Grove before that Sunday, and can you tell the date of that day?—On the Saturday before that Sunday; I think that must have been the 20th, but I really forget the day of the month just now.

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1988. Who were with you on that route on the Sunday besides Lieutenant Adcock, and about how

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how many to the best of your recollection?—There was a detachment of the 6th Royals, a company of Irregular Volunteers, and Captain Astwood's troop, to which I was attached; I think there were about 60 to 70 men.

1989. Did you pass the post-office or Manning's shop on that same morning on your route?—I did.

1990. Did you and others in passing the post-office go direct at once over the Iron Bridge, or elsewhere by mistake, on that Sunday morning?—Myself and others by mistake went down the Holland Bay road that morning.

1991. Do you know the Holland Bay road well; have you been there since October 1865, and if so, when?—I know the Holland Bay road well; I was there since 1865; two days before I attended on Ensign Cullen's trial.

1992. About how far then did you go down on that road towards Holland Bay, before you turned back and went over the Iron Bridge?—About 250 yards; that was on the Sunday when I was with the volunteers.

1993. Did you take then notice of a bamboo draw-rail in a logwood fence on that Holland Bay road; are you sure you saw it on that morning?—I took notice of it, and I am positive I saw it on that morning.

1994. Did you at that same time, on this Holland Bay road, at or near that bamboo draw-rail in the fence, see any three dead bodies on that same morning. Had there been any such there then must you have seen them?—I did not see them. Had they been there I must have seen them.

1995. What made you turn back from the Holland Bay road?—We were ordered back; by "We" I mean the volunteers who accompanied me down the road.

1996. At about what hour on that morning were you on the Holland Bay road near about that bamboo draw-rail?—About 9 a.m.; it might have been 9.30 or 8.30; but it was about 9.

1997. Did you meet any number of persons that morning with hoes and shovels at or near the Iron Bridge or on the Amity Hall road towards the Iron Bridge?—I did not.

1998. *By Prosecutor.*] Who were the volunteers who, with you, went on the Holland Bay road that Sunday morning?—There were several; those that I remember are Trooper Allen, —— Lofthouse, who was acting as bugler, and Lieutenant Brass, who was attached to our troop. There were also one or two other files, whose names I do not at present remember. Lofthouse was just immediately before us.

1999. Who ordered you back, and how was that order given?—Mr. Harrison; the order was given by word of mouth.

2000. Did you hear the order given by Mr. Harrison, and did you return in obedience to it?—I heard the order, and I returned in obedience to it.

2001. Where was Mr. Harrison when he gave that order?—He came pretty near to us.

2002. State as near as you can how near Mr. Harrison came to you?—Within a very few yards, to the best of my recollection.

2003. This, then, was when you, and the others with you, were about 250 yards on the Holland Bay road, as you say?—Yes.

2004. Did Mr. Harrison alone come to you?—I do not recollect.

2005. Did you all turn back as soon as you saw and heard Mr. Harrison's orders?—We did not.

2006. Why did you not turn back?—The files immediately behind us got separated from us, and returned in the direction of the Iron Bridge a little while before us. I turned back as soon as I heard the order. I understood the question to ask why we did not all turn back together.

2007. Did those files return before Mr. Harrison came within the few yards of you?—I think they must have; as far as I can recollect, they did.

2008. At what distance from the post-office did those files return?—I could not say.

2009. Then was it you alone, with Mr. Harrison, that returned last, or were you two accompanied by any others?—I returned with Trooper Allen, Bugler Lofthouse, and Ensign Brass; it was not myself alone that returned with Mr. Harrison, we two being accompanied by others; those others are the persons whose names I have just mentioned.

2010. Where did you find the remainder of the party, the 60 or 70, when you and the others reached the post-office?—In the act of crossing over the bridge.

2011. How long have you been acquainted with the parish of St. Thomas-in-the East; when first did you go there?—I went up to St. Thomas-in-the-East three days after the outbreak; I never was acquainted with it before.

2012. When first did you go on the road from Golden Grove towards the Iron Bridge?—On that Sunday of which I have been speaking.

2013. *By Prisoner.*] You say there were files behind you when you went on the Holland Bay road, and that you turned back immediately you heard Mr. Harrison's order, did the other files actually return before you to the Iron Bridge; or did they make way for you to come first to the Iron Bridge?—They actually returned before us.

2014. You said Mr. Harrison came; do you remember whether just before Mr. Harrison came there was a shouting, and whether you may have heard it while you were on the road?—No, I do not remember if there was a shouting.

2015. You say you were not acquainted with St. Thomas-in-the-East before the outbreak, and not on that road before the Sunday; have you any doubt whatever that you did go on that Holland Bay road on that Sunday, and that was the same road and place which you have seen since, and now again spoken of on oath?—No doubt whatever.

2016. How often have you been on that Holland Bay road before this day?—Very, very frequently; how often I can't say.

2017. *By Court.*] Do you know the bamboo draw-rail to which it is alleged the three men were tied; if so, how far beyond the turning to the Iron Bridge on the Holland Bay road do you consider it to be?—I know the bamboo draw-rail, to which it is alleged the three men were tied, very well. I consider it to be, from abreast of the Iron Bridge, between one and two hundred yards down the Holland Bay road.

2018. Do you know the grave out of which the three skeletons have been taken?—I have seen the spot after the skeletons were taken out.

2019. How is the bamboo rail of which you have spoken situated in regard to that spot?—Very near to it, and almost in front of it; a little to one side entering the draw-rails; the spot is a

little

little to the left, the Holland Bay side; I have never, however, entered the field, but only been down the place.

2020. What were the relative positions of yourself and Lofthouse, the bugler, just before you were ordered back from the Holland Bay road on that Sunday morning?—I was the right-hand man of the leading file, and to the best of my recollections he was in front just before we turned; about two horses' length.

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[The Witness withdraws.

Twenty-first Witness for Defence.

FRANK M'DERMOTT, Planter, residing at Plantain Garden River Estate, St. Thomas-in-the-East, being duly Sworn, is questioned by the Prisoner.

2021. *By Prisoner.*] Do you know Mr. Brooks, who was a book-keeper and volunteer in 1865, during martial law, and was he at Golden Grove then?—Yes; I know Mr. Brooks perfectly well; he was at Golden Grove during martial law in 1865.

2022. Were you one of the volunteers who arrived at Golden Grove from Morant Bay on Saturday, during martial law, with Mr. Brooks and others?—Yes, I was.

2023. On what days did you see Mr. Brooks; did you see him at Golden Grove on that Saturday or on the Sunday next following?—I saw him on the Saturday, the day I have stated he came with me and others from Morant Bay, and shortly afterwards, on the Saturday after his arrival at Golden Grove with myself, he complained of indisposition and went to bed; and, to the best of my recollection, he took no active part in any of the proceedings there, during the time I was there, which was a week, from Saturday to the second Sunday following.

2024. Were you at Golden Grove quarters on the Sunday just after the Saturday of your arrival, part or the whole of that Sunday?—On that Sunday, about 7 a.m., I was sent to the Rhine Pen to procure beef for the troops, and I returned to Golden Grove about 1 p.m. same day. I remained there then the rest of the day.

2025. Before you started for the Rhine on that Sunday, and after your return that day, did you see Mr. Brooks; where was he when you left, and when you returned?—When I left, at 7 a.m, I saw him in bed ailing, and on my return I saw him again in bed; we were all in the same quarters.

2026. On that Sunday, at Golden Grove quarters, did Mr. Brooks, in your presence, or to your knowledge, go away from Golden Grove and bring in any prisoners to Golden Grove; was he in a state to be able to do so?—He did not do so to my knowledge; he was not in a state to be able to do so, from what he said of himself, and from his being in bed. On that Sunday, too, the strictest military discipline was kept up. When I was sent out to the Rhine I was accompanied by two black soldiers, and no one was allowed to move out without some of the troops.

2027. *By Court.*] Do you know the room in which Mr. Brooks lay while at Golden Grove; how many ways are there of getting from that room outside the building?—Yes, I know the room perfectly well; I served as book-keeper at Golden Grove for 10 years, so I ought to know every inch of it. There are two ways of getting outside from that room; one is by a trap-door in the floor, and there is a stair leading down then under the building, from which stair you can go either to the out-offices or out on to the square by a passage leading under the house. The other way of getting out is, on leaving the room, to turn rather to the right, and then go along the piazza and down the stone steps. There is only one door to the room besides the trap-door.

F. M'Dermott.

2028. Is that trap-door commonly used as a mode of exit?—It is used by domestics, but no visitor would ever think of going up it.

2029. Is there any other way of leaving the hall or passage into which the door of Brooks's room opened than by the stone steps you spoke of?—No.

2030. Was a whole room given up to Mr. Brooks in the barracks at Golden Grove on Sunday, 22nd October 1865, or did any other person share it with him?—I think it was; I did not sleep in the same room with him; but I saw other volunteers going backwards into it; I cannot remember the names of those volunteers; I had no object in remembering them.

2031. How many prisoners were there at Golden Grove when you went out to the Rhine that Sunday morning; did you see whether there were more on your return than when you had left; how many more were brought in after your return, and by whom?—I cannot tell how many; I did not reckon them; but there were a good many in the millhouse where the canes are ground; I think there were more when I came back about one p.m., for the constables were apprehending and bringing them in; but I had not the curiosity to go into the millhouse and see how many; I cannot say how many were brought in; in the afternoon sometimes a constable would bring in one, sometimes two prisoners at a time; all that I saw were brought in by constables, black men.

2032. Can you give the names of any of the constables whom you saw bring in any prisoners on that Sunday; or the names of any constables you saw at Golden Grove that day, excluding constables of Golden Grove Estate?—My memory does not serve me there; I saw prisoners brought in after my return at one o'clock, but I cannot recollect the constables' names; I had no thought of committing such a thing to memory; I saw some constables from Winchester Estate, but I know none of their names, excepting those belonging to Golden Grove itself.

2033. Do you know the constables of the names of James Sproul, Bevis Hunter, Allan Bignall, Thomas Brown, John Hamilton; did you see either of them on Sunday, 22nd October?—I know Bevis Hunter, and I know a coloured man, named Hamilton, from Holland or Holland Bay; I also know a cabinet-maker, named James Sproul, but I never knew he was a constable; I also know a wain man from Holland, named Thomas Brown, if that is the same man. Allan Bignall I do not know. I never saw any of those men at Golden Grove on Sunday, 22nd, and I know them perfectly.

[The Witness withdraws.

Twenty-second Witness for Defence.

SUTTON SCOLTOCK, Pennkeeper, residing at Hayning, St. Thomas-in-the-East, being duly Sworn, is questioned by the Prisoner.

S. Scoltock.
12 January 1867.

2034. *By Prisoner.*] Do you know Hayning and Jericho, and the road which leads to those places out of the main post road to Muirton from Quaa Hill; what distance is Muirton from that turning; what distance is it up that turning from the point where it joins the main road to the point where it reaches Hayning and Jericho?—I know them intimately; Muirton is two miles and three quarters to that junction; it is exactly three miles from that junction to Hayning; it is so laid down in the list of parochial roads, and it is about a mile on to Jericho from Hayning, up a very steep road.

2035. What sort of a road is that road which leads from out of the main post road up to Hayning and Jericho, mountainous or otherwise; what was Hayning originally?—It is a mountainous road, a great part of it being cut out of the side of a hill; Hayning originally was a sugar estate.

2036. As you are going up that road towards Hayning from the main post road, with your back to the main post road, on which hand is Scott's Run; is it on the right or the left; in what direction?—On the left; it would lie to the south-eastward of that road.

2037. Then is Hayning in a nearer direction towards Grange Hill than Scott's Run is?—The distance is about the same; but to go to Scott's Run you would have to leave the road, the Hayning-road, after going up a part of it; but you do not leave the road till you have reached the top of the hill, near Hayning.

2038. Is there any road leading out or from that Hayning-road to Grange Hill, say by which a body of men could go, without going by the main post road from Quaa Hill towards Muirton?—No, there is no road.

2039. *By Prosecutor.*] Are there not short cuts of every sort and description all over the country?—Certainly.

2040. Are there not numerous tracks and short cuts in this very district; say, comprising the properties called Hayning, Deeling, Scott's Run, Grange Hill, and Muirton?—Yes; there are plenty of short cuts, all about there, leading to negroes' grounds, and so forth.

2041. Did you ever hear the prisoner, Assistant Surgeon Morris, say, that he had snapped his revolver five times in a negro's face, and he never winked?—No, I don't remember his ever saying that.

2042. Did you ever hear him say anything of the sort?—No, I do not remember his ever saying anything of the sort.

2043. *By Court.*] What is the shortest way from Grange Hill to Muirton?—The shortest way is by the old road, which is not used now on account of its steepness; this road joins the main road just at the Muirton fording, about half a mile from Muirton Great House.

2044. Supposing yourself going up that old road, where would it take you after passing the Great House?—It would bring you out again on the main road on the top of the hill, just before you come to the Williamsfield line.

2045. You have said that Muirton is two miles and three quarters from the Hayning turning by the main road; how far is it, supposing you go over Grange Hill?—By going through Grange Hill you would save a quarter of a mile.

2046. Could a man travel from Hayning to Grange Hill without going on the post road, and how?—Not without going through the bush; there is no road or track even, that I know of; and even if there was a track no one would use it, as the road would be the most direct way.

2047. How long has that old road been abandoned, or not used?—It has been abandoned as a main road for the last 20 years.

2048. Is that old road now practicable for a man riding or walking?—For both; you could ride or walk over it, but you could not drive over it.

[The Witness withdraws.

Twenty-third Witness for Defence.

CHARLES HENRY M'DERMOTT, Book-keeper on Wheelerfield Estate, St. Thomas-in-the-East, being duly Sworn, is questioned by the Prisoner.

C. H. M'Dermott.

2049. *By Prisoner.*] WERE you a book-keeper on Duckenfield Estate in 1865, 1866, or any parts of those years?—I was there in 1866 and part of 1865.

2050. Do you know the Duckenfield grass piece opposite to the post-office, near the Iron Bridge, towards the Holland Bay road?—Yes.

2051. Were you superintending any estates work in that grass piece in 1865; and if so, when?—I forget the exact month in 1865, but I was in that grass piece in that year.

2052. Was it before, or during, or after martial law?—Before martial law.

2053. Were you there scything any grass afterwards?—We scythed the grass before martial law; after martial law the grass was growing up quite young.

2054. Did you see that grass just fresh and young after martial law in that grass piece?—Yes, I did.

2055. Do you know the bamboo draw-rail of that grass piece, from the Holland Bay road?—Yes.

2056. Were you near there after martial law?—I was there after martial law, and in both the grass pieces.

2057. About what month or year were you there after martial law, at the earliest period you can remember?—I was there at the end of October; between the end of October and beginning of November 1865.

2058. Do you now know the place in that grass piece out of which some bones are alleged to have been taken, in reference to this inquiry?—I do not know the exact spot.

2059. Were you near that bamboo draw-rail at the end of October or beginning of November 1865; in the grass piece?—Yes. I would have to open that rail before I could get into the grass piece.

2060. When

2060. When you were near about that bamboo rail, inside the grass piece, did you see any marks of any recent or fresh grave when you first were there at the end of October or beginning of November. If there had been any such, must you have seen them or the fresh grave?—I saw no fresh grave, as I did not go into the grass piece for the purpose of looking for that.

2061. Were you in St. Thomas-in-the-East on the 21st or 22nd October 1865, during martial law?—No, I was not; I was in St. David's, at the Albion Estate.

2062. *By Prosecutor.*] Are you the same Charles Henry M'Dermott who gave evidence in this room before a court martial which sat for the trial of Ensign Cullen?—Yes.

2063. On that court martial, was this question put to you: "Had you a gang at work there shortly after martial law, and afterwards; did you go to that gang and line out the work?" and did you make this answer: "Yes, I had two men, two scything men, cutting grass there shortly after martial law, and I went to the men and lined out the work"?—Yes, I recollect that question, and my making that answer.

2064. Were you, before that court martial, asked, "Do you know where the place is, inside this grass piece, out of which some bones were dug up, at the instance of Colonel Daniell near this same bamboo rail draw fence, and in which three persons killed are said to have been buried in October 1865?" and did you answer, "Yes, I know the place, but I never saw any grave there, though I have been through and through the grass piece"?—Yes, I did say so; for I saw no grave.

C. H. M'Dermott.
12 January 1867.

2065. *By Prisoner.*] Which statement is correct then, that you did have two men scything or cutting in that grass piece; after martial law, or before martial law. Recollect yourself?—Before martial law.

2066. How do you explain the two statements?—Because we put about in November to commence crop, the sugar crop; all the hands were engaged. I know nothing of what took place during martial law. We very seldom cut grass during crop.

2067. Were you in this grass piece after crop was commenced?—Yes, I was.

[The Witness withdraws.

Twenty-fourth Witness for Defence.

No. 693. Corporal Allin Henry Maddix, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

2068. *By Prisoner.*] Were you with Ensign Cullen and Dr. Morris on the march from Manchioneal to Golden Grove during martial law, and did you stop at the post-office, Manning's shop, on your march that time?—I was on that March, and stopped at the post-office.

2069. Were any three prisoners shot that day by you, or by any one at or near the Iron Bridge that day, to your knowledge?—No, not to my knowledge.

2070. Tell how Dr. Morris was that same day; was he well or ill, the whole time you stopped at the post-office that day?—He was sick with head-ache the whole time; I was with him at the time.

2071. Who attended him the whole time?—I did.

2072. Was any advanced guard sent on by Ensign Cullen that day from the post-office to Golden Grove, when you arrived at the post-office; was any corporal sent with them?—Yes, there was; with a corporal; Corporal Hunter.

Corporal *A. H. Maddix.*

2073. About how long after you got to the post-office was the advance guard sent on from the post-office by Ensign Cullen that same time?—About 10 minutes afterwards.

2074. To the best of your knowledge, did Dr. Morris ever leave the post-office, Manning's shop, from the time you arrived at the post-office till the time he left it for Golden Grove?—He did not, to the best of my knowledge.

At 1 p.m., the Court adjourns till 10 a.m., Monday next, 14th instant.

Twenty-second Day, 14th January 1867.

On Monday, the 14th of January 1867, at 10 a.m., the Court re-assembles, pursuant to adjournment:—Present, the same Members as on 12th instant, and proceeds with cross-examination of Corporal Maddix.

2075. *By Prosecutor.*] Where did you remain all the time you were at the post-office or Iron Bridge that Saturday (21st October 1865)?—I remained in the little room joined on to the shop, where Dr. Morris was.

2076. Did the doctor remain in the room with you all the day, from the time of his arrival until he went away?—He did.

2077. Are you sure neither of you left the room the whole time?—Yes; I am sure I only went as far as the door.

2078. What was the matter with Dr. Morris at the post-office that day?—He had the head-ache.

Corporal *A. H. Maddix.*
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2079. What particular service were you rendering him from the time you arrived at the post-office?—He had no servant, and I was attending him; I was bathing his head the whole time I was with him.

2080. Did you see the "advance guard" leave the post-office; I mean, leave the place?—I did.

2081. At what time of day did it leave?—Left about 10 minutes after we arrived there; that would

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would be 10 minutes after 9 a.m., as we arrived about 9 a.m.

2082. Of what was the advance guard composed, and how did it leave?—It was composed of a section, but I cannot say the number; about 10 left altogether, under the command of Corporal Hunter.

2083. At what hour did the detachment leave the post-office?—We left about three hours after we arrived; about 12 o'clock.

2084. And at what time did you arrive at Golden Grove?—About a quarter after 12; I am not certain, but about a quarter of an hour after we left the post-office.

2085. Did you hear the report of guns at any time while you were at the post-office?—I did not.

2086. Whom did you see when you arrived at Golden Grove?—I saw a few of the 6th and some volunteers, mounted volunteers, under the command of Lieutenant Adcock, of the 6th Regiment.

2087. Did you see anybody at all, of any description, come to the post-office while you were there on the Saturday?—I saw one of the volunteers come there, I think; I saw also a few civilians come to Manning's shop, but I do not know them; they were black people.

2088. At what hour of the day did the volunteers come to the post-office?—About half an hour before we started; about 11.30 a.m., I should say.

2089. Where did that volunteer go to from the post-office?—He returned back to Golden Grove.

2090. *By Court.*] Did Dr. Morris talk to you, or give you any orders while at the post-office?—He did; he told me to get some Florida water, and to wet his head with it; nothing else was said to me.

2091. Was any one else in attendance upon Dr. Morris besides you?—No, not that I saw.

2092. Did you see Dr. Morris dismount from his horse when he arrived at the post-office, or mount when he left for Golden Grove?—I saw him on both occasions.

2093. Did he mount and dismount without assistance, or was he helped?—He mounted and dismounted without assistance.

2094. Were the rifles of the detachment loaded when you left Manchioneal?—I am not certain; my own was not, but I am not certain about the rest.

2095. Were you on the march with Ensign Cullen and Dr. Morris, from Muirton to Hayning and back, on 18th October 1865?—I cannot rightly say, but I do not think I was; I cannot recollect, as we went out to different places; I do not recollect Hayning, as I had never been in that part of the island before.

[The Witness withdraws.

[The Court is closed for a few minutes for discussion, and being re-opened—

Twenty-fifth Witness for Defence.

William George Astwood, Merchant of Kingston, is duly Sworn, and Questioned by Prisoner.

W. G. Astwood.

2096. *By Prisoner.*] During martial law, were you in St. Thomas-in-the-East, and what rank did you fill, and whereabouts were you, and are you a justice of the peace for the city and parish of Kingston?—I was in St. Thomas-in-the-East during martial law at Morant Bay, and in the Plantain Garden River District. I was there in command of a troop of volunteers. I am a justice of the peace for the city and parish of Kingston.

2097. On Sunday the 22nd October 1865, did you go from Golden Grove to the Iron Bridge, and who accompanied you, and did you see or hear of any dead bodies being tied to the bamboo rail in the logwood hedge of the Duckenfield grass piece, and had those dead bodies been so exposed, must you have seen them?—I did go on Sunday by the post-office and Iron Bridge; I had with me men of my own troop, men of the 6th Regiment, under Lieutenant Adcock, and some local volunteers under Ford. I did not see or hear of any dead bodies being tied to a bamboo rail; I went no further than the road opposite the post-office to the Iron Bridge; and from recent observations, I am now able to state that I could not have seen them had they been there.

2098. How long did the detachment remain at the post-office that Sunday morning, and where did you proceed to afterwards?—The detachment did not remain long at the post-office; I am not able to say exactly how long, some 15 minutes, or thereabouts, not more; we only stopped sufficiently long to recall some men who had followed the main road beyond the turning to the Bridge, and to pass the detachment over the Bridge two at a time. This was done leisurely, none of our movements were hurried that day. We went on to Amity Hall village, Amity Hall Great House, and the estates beyond that towards the Rhine; Hordley, Wheelerfield, Bachelor's Hall, Penn, Plantain Garden River Estate, Winchester, and on to Golden Grove.

2099. On that Sunday morning was Mr. George Manning pointed out to you at the post-office, and where was he standing, and did he report to you or anyone with you, in your hearing, that three men had been shot the day previous, and had he time and opportunity to do so?—Mr. George Manning was pointed out to me, he was standing in a door of the post-office. He did not report to me or to any one, in my hearing, relative to three men having been shot. He had abundance of time to do so, as I saw some of the men dismount and enter his shop.

2100. Did you receive or hear of any complaints from any one at all, as to the shooting of three men, and of their lying dead at the bamboo rail in the logwood hedge, or did any person whatever complain to you, or inform you or those with you, of three men being shot?—I received no complaints; I heard of none whatever, nor did any of the men with me state that they heard of any man having been shot.

2101. Can you tell how many were with you on that route on the morning of the 22nd October 1865, and can you tell the Court some of their names, or all, or as many as you can remember now?—All told, about 40; I can speak more distinctly as to my own troop. I remember most of them, but now I do not think I can remember all of them

them even. There was Lieutenant Brass, Serjeant Allen, Troopers Brandon, Berry, Silvera, Lofthouse, Watson, Hines. Mr. Fowles who was with me, but belonging to another troop, Mr. Saunders, also Lieutenant Adcock of the 6th Regiment, with some nine or ten men of the 6th Regiment, and Ford was there with some of his men; I could give some of the names of the latter, if necessary.

2102. Did you see any crows that Sunday morning about the Duckenfield grass piece; and had there been any, would you have noticed them. Do you believe that if three bodies had been exposed from Saturday until Sunday morning, from your own personal knowledge and observation of the habits of the crow of this country, would there not have been seen crows hovering about?—I saw no crows about the Duckenfield grass piece, or the trees adjacent. Had there been any, they doubtless would have been disturbed by the horses passing, and I should have noticed them. I do believe we should, under those circumstances, have seen a number of crows hovering about.

2103. Do you remember passing by the Duckenfield grass piece, and anything happening, or any of your men halting and talking to anyone?—I remember nothing more than the men missing the road, and being called back by Mr. Harrison: I remember, as I said before, some of the men of the party dismounting and going in and talking to Manning; I remember nothing more. I also remember Mr. Harrison riding up and looking over the fence, a little to the eastward of the post-office, just beyond it; to see if there was a horse of his there, which he had promised to lend me.

2104. Can you say about, or as near as you can, what time of the morning of the 22nd October 1865 you reached the Iron Bridge?—I did not consult any watch, but I should think between seven and eight a. m., nearer seven a. m.

2105. Did you meet, or see any persons with hoes and shovels or other digging implements on that Sunday morning, 22nd October 1865?—I neither met nor saw any.

2106. After you left the Iron Bridge, how long were you about Amity Hall, having the road therefrom to the Iron Bridge under your observation?—I should think we were about Amity Hall, and that road leading therefrom, up to 10 a. m., I should say.

2107. Had any of your troop seen any persons with hoes or digging implements, would it have been their duty to report it to you, and was any such report made?—It would have been their duty to report it, and to bring them to me; no such report or arrest was made.

2108. After you left Amity Hall, where did you go, and did the same parties who went with you to the Iron Bridge accompany you?—The next place we went to was the works at Wheelerfield; the rest of the route I have already described; the same parties accompanied us throughout.

2109. The name of Captain Ford has been spoken of several times during this inquiry; are you not aware that he was not in this island from October last year, 1866, and has been, and still is, absent from this island?—I am aware of that fact, as to his absence.

2110. Did you, on the 21st October 1865, order Mr. Brandon and Mr. Berry to go to the Iron Bridge as an advance guard; did they also, on the 22nd October 1865, go as an advance guard to the detachment which accompanied you?—I ordered them, on the 21st, to go up to the Iron Bridge, and state to Ensign Cullen that we had halted at Golden Grove, and that he must join us there. On the 22nd they went as an advance guard.

2111. You stated you sent Berry and Brandon to the post-office on the 21st October: what time of the day was it, can you remember, or as near as you can?—As near as I can recollect, I sent them between one and two p. m., but I beg it to be understood that I do not profess to be giving hours with great accuracy, as I consulted no watch.

2112. Did you give Mr. Berry and Mr. Brandon, on the morning of the 22nd October 1865, any instructions, and what was their nature, or did you leave them to act without instructions?—They had general instructions from me to scan the country on either side, and to report to me anything extraordinary or unusual.

2113. When first did you hear the report about the killing of the three men at the Iron Bridge, and did you, as a fact, make any inquiries of your men about it?—I first heard the report when the Royal Commission was drawing to a close. I did make inquiries of my men, as the circumstances so surprised me.

2114. Did you have any occasion to communicate with Dr. Morris on the afternoon of his arrival at Golden Grove; that is to say, Saturday, the 21st October 1865?—Shortly after his arrival at Golden Grove, I went into the drawing room and found him lying on the sofa; I shook him and told him to get up and talk to us. He turned over, and in a sort of grumbling manner said he was ill. He lay still and did not get up.

2115. Are you aware, whether or not, bodies of black soldiers, volunteers, and Maroons, were about the district before and after you were there on 21st October 1865?—I am aware, of my own knowledge, that they were there whilst I was there, up to the 24th, before and after I heard they were there, but this I do not know of my own knowledge.

2116. Did Ensign Cullen sit near you on the arrival of troops at Golden Grove, on the 21st October 1865 at dinner; if so, did he state that any men were shot on that line of march?—He sat near me at dinner; he did not mention about any men being shot, though our conversation was free, and on the subject of our respective marches.

2117. Are you aware, of your own knowledge, that Mr. Mortimer Brandon, one of the members of the troop of volunteers under your command, is still absent from the island?—I am aware of my own knowledge that he is.

2118. About Golden Grove on that road, about that time, Sunday, 22nd October 1865, and when you were there, who were chiefly to be seen, males or females, or any one?—There were not many people to be seen; they were chiefly women, children, and old men; and people with sore legs, &c.

2119. During martial law, was it the habit of the negroes to congregate around any detachment of troops whilst they were halted?—It was rather their habit to get out of the way; we seldom could get a boy to hold our horses if we wished it.

2120. Did you, on Sunday morning the 22nd day

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day of October 1865, see any persons congregated about the post-office and Iron Bridge?—I saw no congregation; I only remember seeing one person, who was a domestic of Manning's, or had something to do with his establishment.

2121. Have you been lately to the post-office at the Iron Bridge, Plantain Garden River, and when?—I was there on 30th December last.

2122. Did you make any observations respecting the bamboo rail in the logwood hedge, leading to the Duckenfield grass piece, and if so, what were they?—I placed Mr. Sinclair, a taller person than myself, at the bamboo-rail; I then mounted a horse and rode to the middle of the road, opposite the post office, and observed, if I could see Mr. Sinclair; knowing he was there I could discriminate the outline of his head, through the upper leaves of the foliage of the hedge; had the hedge been the least bit higher I could not have seen him. The line of vision, where I sat, crossed the hedge obliquely, twice, in consequence of its curve.

2123. Were there any interstices in the logwood hedge through which you could see, looking towards the bamboo rail in that hedge?—Looking at the hedge at a right angle to it, there were openings in the stumps forming the hedge; but all those openings were naturally closed when looking obliquely at the hedge, one part overlapping the other, and it was thereby utterly impossible to see through it.

2124. Did you, when you last visited St. Thomas-in-the-East, ride down on the road towards the bamboo rail, as far as where you observed some of your troop go on the morning of the 22nd October 1865, and if so, what did you observe?—I rode down as far as where I observed the leading files of the troop go on the 22nd October 1865, when they passed the road to the Iron Bridge. I saw the rail fence then distinctly before me, and the whole of the figures of Mr. Sinclair and Mr. Bury distinctly, standing at the bamboo rail; I did not go down actually as far as the rail, but as far as where I had seen my men go on that Sunday.

2125. How do you account for your troop missing the way on the morning of the 22nd October 1865?—We were to have been led by Mr. Harrison as guide, as none of us knew the road, but he happened to be behind at the time, looking for his horse, and the men naturally followed the main road, in his absence, not being told to turn off.

2126. How many paces is the bamboo rail, in the logwood hedge, from where your men should have turned off to the Iron Bridge?—It is 56 paces from the turn off to the Iron Bridge, down to the bamboo rail.

2127. How far, on those 56 paces, did you observe those men of yours, when you stopped them?—I can't say how far those in front went, but the main body of them were about two-thirds of that distance.

2128. Was it possible for any one, being a volunteer or otherwise, to have handed over prisoners to Lieutenant Adcock and Ford at the hour of half-past 10 o'clock in the morning of Sunday the 22nd October 1865?—We only had prisoners handed over at Bachelor's Hall Penn that day by Captain Mendes, a Maroon captain; there were eight or 10 prisoners; this was about 12 noon, we saw no other prisoners on our march that day.

2129. Did you, when last in St. Thomas-in-the-East, examine the posts and rails of the bamboo rail in the logwood hedge, and did you see any bullet marks on any of them?—I saw some old posts and rails still standing; I saw other old ones lying on the ground which had been replaced by new ones in the rail; I examined the whole of these old bamboos most minutely, and saw no traces of bullet marks. Alfred Berry also examined them with me.

2130. *By Prosecutor.*] Did you, or any of your party, on the 22nd of October, burn any buildings?—There were buildings burnt that day by our party, at Quaa Hill, and elsewhere.

2131. Did you burn any on Amity Hall Estate; if so, state what sort of building?—I speak of Quaa Hill as Amity Hall; the description of buildings were negro huts, and one place a chapel of some sort; I do not know of what denomination, if any was burnt at Amity Hall.

2132. At what hour was the chapel, as you describe it, burnt?—I should say between nine or 10 a.m., or about nine a.m.

2133. At what hour did you, and the others with you, arrive at Golden Grove on the 21st of October?—Between one and two p.m., but I again repeat I cannot give the hours exactly.

2134. By whose directions did you send off Berry and Brandon to Ensign Cullen on the 21st October?—It was suggested to me to do so by Lieutenant Adcock.

2135. Did you ever lose sight of Berry and Brandon on the morning of the 22nd?—I cannot answer that question; I can only reason upon it; I did lose sight of some of those in front, but cannot say who they were.

2136. How far forward did Berry and Brandon go on the morning of the 22nd, that is, of the main body?—Whilst in the cultivated district they did not ride far in front, some 20 to 25 yards, more or less; when we passed the bridge we were more particular, and made them ride some 50 to 100 yards in front, and Mr. Harrison with them.

2137. You account for the men going on the wrong road by saying that Mr. Harrison, who was to act as guide stopped to look for his horse; were you all going, or did you all go right, until he stopped to look for the horse?—Until we arrived at the Iron Bridge we followed the main road, and could make no mistake before the bridge; I knew we were going to Amity Hall, but did not know the road to it.

2138. Was it known before you left Golden Grove, by the detachment generally, what your route was to be?—I do not think it was.

2139. Are there any roads off the direct road, from Golden Grove to the Iron Bridge, or post-office, before you reach the Iron Bridge, or post-office?—There are cane piece intervals and a road leading to Duckenfield Estate; I do not know of any others.

2140. Did any of your party take the road leading into Duckenfield?—I saw none; I should say not.

2141. Are we to understand that you went, on the 30th December last, only as far down the Holland Bay Road as the spot which those who went by mistake down that road reached on the 22nd October 1865?—I went farther; but the evidence which I gave to-day meant that I went at first for the purposes of observation only, as far as the place which my men reached on the 22nd October.

2142. Then on the morning of the 22nd of October,

October, you had the men in view from where you remained until they reached this spot?—I had the bulk of the men in view; but, as I have already stated, some of those in the extreme front were very probably out of my view. I cannot say whether or not those farthest in front were out of my sight.

2143. You have said that soldiers, volunteers, and Maroons were about, while you were in the district; will you state, as near as you can, how many Maroons you saw, and when you saw them?—I saw Maroons on the 22nd October, some three or four, along with Mendes, a Maroon, who delivered prisoners up to us at Bachelors' Hall, Penn. I also saw Maroons in the afternoon who came to Golden Grove, and delivered prisoners up to Lieutenant Adcock. I do not know who these Maroons were who came to Golden Grove later; but I am inclined to think they were the same as those we had previously seen at Bachelors' Hall.

2144. What became of the prisoners which Captain Mendes had at Bachelors' Hall?—Some were flogged and sent away, others were dismissed without punishment.

2145. When all the prisoners were disposed of, as you have just stated, at Bachelors' Hall, what became of Captain Mendes?—He went away in another direction from us; we separated; I cannot tell the road he took.

2146. *By Court.*] Did you send written or verbal orders by Brandon and Berry, when you sent men from Golden Grove on 21st October 1865 to the post-office?—Verbal.

2147. In what part of the column did the detachment of the 2nd Battalion, 6th Regiment march; were any of them left behind when you moved over the Iron Bridge, and on the road beyond, on Sunday the 22nd October 1865?—The men of the 6th Regiment were in the middle of the column, behind my men, and in front of Ford's. I cannot say whether any of them were left behind on that occasion, but they were in the habit of falling out whenever they got a chance; and my men were often sent back to bring them up.

2148. Can you give the names of the men you say you saw dismount and enter the post-office on that Sunday morning, 22nd October 1865?—I can only name two; I saw Captain Ford and a man of the name of Stuart; Stuart is now a book-keeper on Golden Grove Estate, but I do not know his Christian name.

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2149. Did the party halt at the Iron Bridge, and not pass over until the men who had gone down the wrong road had returned and resumed their proper places in front?—The party halted, and the men who had not gone beyond the turning commenced to pass the bridge. Those who had gone down the road returned, and resumed their places as best they could.

2150. Did you, as commanding officer, wait until all had passed over, and the error was corrected?—I passed over with the last of my own troop who were in order, and in front of the men of the 6th Regiment and Ford's men; and I corrected the mistake after we had passed over the bridge.

2151. When did you see a volunteer of your troop, Watson, pass over the bridge?—I do not think he passed over in front of me; I do not remember seeing him particularly.

2152. Did you see any of the men of the 6th Regiment dismount at the post-office on that Sunday morning?—I did not observe any of them.

2153. Did you go into the Duckenfield grass piece when last in St. Thomas'-in-the-East, and did you see any mounds in that grass piece which might lead you to suppose that they indicated the sites of graves?—I went into the Duckenfield grass piece when last in St. Thomas'-in-the-East, and within about six paces of the rail, and parallel with the rail; the ground is a little higher than the rest of the field, although it might not be termed a mound; this mound would only indicate the sites of very old graves; there were no angles to indicate a grave in the usual way, and it therefore could only have been such a one as had been trampled down by cattle. I observed no other mounds but this one.

2154. Do you know the date of Mr. Ford's departure from Jamaica; was it before the beginning of October or not; if before, how long before; was it after the arrival of this court martial in the island?—I do not know the date, but I believe it was before the first court martial commenced its sittings. He has been away for several months. I cannot say whether his departure was after the arrival of the Court in this island.

[The Witness withdraws.

Twenty-sixth Witness for Defence.

JOHN HENRY DAVIS, Cashier to Mr. Charles Levy, and residing in Kingston, being duly sworn, is questioned by the Prisoner.

2155. *By Prisoner.*] WERE you, during martial law, in St. Thomas-in-the-East, and were you attached to Captain Astwood's Volunteer Cavalry?—Yes, I was.

2156. On Sunday morning, the 22nd October 1865, did you leave Golden Grove, and go towards the Iron Bridge; and when you went along the road from Golden Grove, were you stationed on the right or on the left hand?—Yes; and to the best of my recollection, I was on the right hand.

2157. Had you received that morning any orders to keep a sharp look out, and did you do so?—Yes.

2158. Did you on that Sunday morning meet any labouring people with hoes, shovels, or pick-axes, or other digging implements?—No, I did not.

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2159. Did you see the bodies of three men from the Iron Bridge, towards the Holland Bay-road, to your right as you crossed over along that road on Sunday, 22nd October 1865?—No, I did not see any dead bodies that morning.

2160. Did you hear on that morning, Sunday, 22nd October 1865, any complaint that three men had been shot the day previous, or was any information given you, or those with you, by any one upon that subject?—No; I did not hear of any such thing myself.

[The Witness withdraws.

Twenty-seventh Witness for Defence.

No. 740. Private John Edge, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

Private *J. Edge.*

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2161. *By Prisoner.*] Were you ever at Muirton in St. Thomas-in-the-East; if so, when first, and what did you do when you arrived there, and where did you go to the first night of your arrival, and with whom?—Yes; I was there first on 16th October 1865; I went that evening with a party under command of Dr. Morris; he was in charge; to Bettys Hope; the party consisted of one non-commissioned officer and 12 privates.

2162. On returning that 16th October 1865, from Bettys Hope, was the party halted; if so, state for what purpose?—On returning, about midway between Bettys Hope and Muirton, Dr. Morris gave the command to halt. He ordered a few men to dismount, and assist him in searching for his revolver pin and chambers. I was one of the men who dismounted and assisted in the search; the chambers were picked up and handed to Dr. Morris; but we could not find the pin, as it was then dark; we then came home to Muirton without finding the pin. Private Harrison, 2nd Battalion 6th Regiment, picked up the chambers.

2163. Were you present on the 18th October 1865, when Dr. Morris and Ensign Cullen left Muirton with a party of men; and had he, Dr. Morris, his revolver with him; were you present when he returned, and did you notice whether Assistant Surgeon Morris had a revolver then?—I was present on the 18th, when they left Muirton. Dr. Morris had no revolver; I was present when they came back to Muirton, and he had no revolver then.

2164. *By Prosecutor.*] By what means did you come to know that Dr. Morris had not his revolver with him?—I was standing near to Dr. Morris when he mounted his horse that morning. I saw that he had no revolver with him when he left Muirton. I saw his revolver lying on the window at Muirton House during his absence that day.

2165. What was your duty on that 18th of October 1865?—I mounted guard about 10 a.m.; the guard-room in which we were stationed was next to the room where the pistol lay on the window.

2166. Was it while you were on guard that you saw this pistol on the window in the next room?—Yes.

2167. Who occupied the next room, on the window of which you saw the pistol?—It was the officers used to sleep in that room; Captain Hole, Ensign Lewis, Ensign Cullen, Dr. Morris, and Lieutenant Warmington, of the volunteers. It was also used as a court-martial room.

2168. At what hour of the day of the 18th October did you see Dr. Morris go away?—It was about seven a.m.

2169. How then did you know it was Dr. Morris's pistol that you saw on the window?—Because the chamber was separated from the other part, from being deficient of the pin.

2170. And were you able to see all that without taking up the pistol from where you were on guard?—Yes.

[The Witness withdraws.

Twenty-eighth Witness for Defence.

No. 229. Lance Corporal John Handley, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

Lance Corporal *J. Handley.*

2171. *By Prisoner.*] Did you report yourself sick on the 16th October 1865; if so, to whom, and where were you then?—I did, to Dr. Morris at Muirton.

2172. Were you at Muirton in St. Thomas-in-the-East on the 18th October 1865; did you see Dr. Morris and Ensign Cullen with a party of men leave, and had Dr. Morris a revolver with him; and on his return did you see if he had a revolver?—I was there on the 18th; I saw that party leave; Dr. Morris had no revolver in his possession; I saw him on his return, and he had no revolver then.

2173. Were you on duty that day, 18th October 1865; if so, on what duty; would you, from where you were on duty, have seen Assistant Surgeon Morris when he went out?—I mounted guard that day, as corporal of the guard, about nine a. m. Dr. Morris went out before I was on duty, but I did see him when he went away.

2174. How do you remember that 18th October 1865 from any other day, had any detachment been sent out before under Ensign Cullen?—Because it was the first detachment that was sent out, except the one that went under Dr. Morris to Bettys Hope; none had gone out under Ensign Cullen before.

2175. Had you seen Dr. Morris's revolver about Muirton House, and where, and for how long?—About a week; on the second window on the right hand side of Muirton House. It was rusty, and on one occasion I saw it in two parts on the window.

2176. *By Prosecutor.*] How came you to be so very observant of Dr. Morris, and of what he had, or had not with him?—Because I was present on the ground, and could not but see; taking notice of all parties leaving.

2177. Are you sure you saw Dr. Morris's revolver for a week on the second window on the right side in Muirton House?—I might not have seen it a week, it might have been a day short; but it was about a week, to the best of my recollection.

2178. Was that before or after the day he went out with Ensign Cullen, of which you have spoken?—A week after, and on that day also.

2179. What part of the house was that window on which you saw the revolver?—It was on the left of the house as you entered on the front entrance; on the right as I entered from the guard.

2180. How far is this from the guard-room?—About five yards, as near as I can put it.

2181. What do you say was the matter with the revolver that occasioned it to be left behind?—The breech-pin was lost; it was deficient of the breech-pin then, when it was on the window.

2182. Did

2182. Did you ever take the revolver in your hand?—Yes.

2183. When did you do so, and why?—I cannot recollect the day when I did so, but it was to satisfy my own curiosity, to see what was the matter with it.

2184. *By Court.*] Did Ensign Cullen take a revolver out with him on the 18th October 1865, or any one else of that party?—I did not see any in his possession; I do not think he did; nor did any one else that I know.

[The Witness withdraws.

Lance Corporal *J. Handley.*

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Twenty-ninth Witness for Defence.

No. 252. Serjeant LEWIS O'CONNOR, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

2185. *By Prisoner.*] WERE you one of the men on the march with Ensign Cullen and Dr. Morris, and others, from Manchioneal, past the Iron Bridge, halting at the post-office, then on to Golden Grove on 21st October 1865?—Yes.

2186. Whilst at the post-office did you shoot, or see shot any prisoners, and did you hear any report of guns?—I neither shot, or saw shot any prisoners, nor heard any reports of guns.

2187. Was an advance guard sent on to Golden Grove from the post-office, and who was in command?—I cannot say; I do not remember.

2188. Where was Dr. Morris during the time you were at the post-office?—He was sick, inside the house.

2189. Were you out with Ensign Cullen and Assistant-surgeon Morris, on 18th October 1865, that is the first detachment sent out under Ensign Cullen?—Yes.

2190. Where did you go on the 18th October 1865, and did you see any one shot that day?—We went to Haining; I saw no one shot that day.

2191. *By Prosecutor.*] Where were you all the time the detachment was at the post-office on the 21st of October?—I was sitting down there, outside the post-office door in front.

2192. Were you sitting on the ground, or on what?—On the ground.

2193. Did Dr. Morris leave the room in which you say he was at the post-office, at any time while you were there?—No.

2194. Will you now tell what part of the premises you were sitting or lying down at, while you were at the post-office?—In front of the door, where you can see outside the road.

2195. Did you remain at that same spot all the time you were at the post-office?—I moved up and down.

2196. What time did you arrive at, and what time did you leave the post-office?—I arrived there about nine o'clock, but I can't remember what time I leave.

2197. And being, as you say, all that time in front, moving up and down, did you see anybody at all come to the post-office?—I see people pass in the road.

2198. Did you see anybody at all stop at the post-office during all that time?—No.

2199. When you marched from Manchioneal to the post-office, on the 21st October, were the rifles of the detachment loaded or not?—They were not loaded.

2200. Are you quite certain that you saw no one stop at all at the post-office, and speak to any one at all, all the time you were there?—There is none stop there.

2201. Did you meet any one on the way from the post-office to Golden Grove?—I do'nt remember I met anybody.

2202. You say you went to Haining on the 18th of October; where did you go from, and what road did you take, and what properties did you pass through to get to Haining?—I go from Muirton to Haining; we took the main road; we don't pass through any properties; I do not know the names of places there, as I am a stranger there, but I know we walked round by the main road to go to Haining.

2203. Did you get on the main road immediately after you got out of Muirton, and did you ever leave the main road at all anywhere between Muirton and Haining?—We got on the main road immediately after we leave Muirton, and by the main road from Muirton up to Haining.

2204. Do you know a place called Grange Hill; where is it?—I don't know it.

It being now 4 p.m., the Court adjourns till 10 a.m. to-morrow, 15th instant.

Serjeant *L. O'Connor.*

TWENTY-THIRD DAY, 15th January 1867.

On Tuesday, the 15th January 1867, at 10 a.m., the Court re-assembles, pursuant to adjournment: Present, the same Members as yesterday, and proceeds with the cross-examination of Serjeant L. O'CONNOR.

2205. *By Prosecutor.*] Do you know a place called Deeling?—No.

2206. At what hour of the day did you leave Muirton to go to Haining?—Between 6 and 7 a.m.

2207. At what hour did you return to Muirton?—About 4 p.m., but I don't rightly recollect.

2208. Did you do nothing then beyond marching from Muirton to Haining and back to Muirton during all that intermediate time?—No; nor did nothing but march to Haining and back.

2209. *By Court.*] What rank did you hold when with that detachment at Muirton?—I was a full corporal.

Serjeant *L. O'Connor.*

15 January 1867.

Serjeant *L. O'Connor.* 15 January 1867.

2210. Was the detachment at Muirton composed of men of your own company, or was it made up from different companies. Were there any men of any other regiment in it?—They were of different companies. I belonged to No. 5 Company of 1st West India Regiment, and all the black soldiers belonged to that same regiment.

2211. Do you know places called Scott's Run and Jericho?—No.

2212. Was there a man called Andrew Williams in the detachment; to which company did he belong?—Yes; he belonged to No. 5 Company of my regiment.

[The Witness withdraws.

Thirtieth Witness for Defence.

No. 162. Private JOHN DOOLAN, 2nd Battalion 6th Regiment, being duly sworn, is questioned by the Prisoner.

Private *J. Doolan.*

2213. *By Prisoner.*] Do you remember martial law; where were you on the 18th October 1865, and what occurred on that day, to the best of your recollection?—I remember martial law; I was at Muirton on the 18th October 1865. On that morning I remember a party of 1st West India Regiment going out under Mr. Cullen at day-break; Dr. Morris was along with him; they went down the main road; and after breakfast that same morning a party of six men of the 6th Regiment went down part of that same road under Serjeant Webster, and turned off to Grange Hill. I was one of the party. Serjeant Webster and part of the men asked if any black soldiers had been there; that is, at Grange Hill, that morning, and they were told "No."

2214. Why did you, on that 18th October, go to Grange Hill?—We were allowed out when off duty; we were not on duty when we went to Grange Hill, but went out for a ride.

2215. Did you see any dead body at Grange Hill, or hear of any having been shot there on that day?—No, there was no dead body; I did not hear of any one having been shot.

2216. Did you see Assistant Surgeon Morris start on the morning of the 18th October; if so, did you speak to him at all or do anything for him, and to the best of your belief how was he armed?—I saw him start that morning; I caught a horse for him; he only had his sword.

2217. Did Assistant Surgeon Morris ever ask you to clean his revolver; if so, when?—He did; the afternoon before he went out; the afternoon of the 17th; and asked me to put it back in the same place I brought it from, on the window bottom; it was in two pieces then. I went the next morning, after he went away, to look at it; it was too rusty, and I had no oil to clean it with; I did not clean it; it was impossible, and I left it in the same place in two pieces.

2218. *By Prosecutor.*] At what time of the day did you arrive at Grange Hill; that is, Serjeant Webster and the six men?—I could not exactly say that; I do not remember; but it was about an hour, or an hour and a-half after we left, as it was not far from Muirton. We left Muirton after breakfast; about 9 a.m., as near as I can guess.

2219. Did you dismount at all at any place during that ride?—We dismounted at intervals and walked a bit; I cannot remember the name of any place. I could not think of the names of all the places, it was so long ago.

2220. Did you go into any house?—No.

2221. Did you hear, before Ensign Cullen and Dr. Morris left, on the morning of the 18th October, what place they were going to?—No.

2222. How many people did you see at Grange Hill?—I could not exactly say, not very many; they would not stand when they saw us coming; some were women and children; part were creoles, that is, light coloured, and some were black.

2223. Whereabouts on the property did you see them, and were they altogether or how?—They were scattered; not all together, here and there.

2224. How often then, and of how many did you ask about the black soldiers?—We asked several; Serjeant Webster and some of the men asked.

2225. What made you ask at Grange Hill if black soldiers had been there that morning?—We used frequently to do it when we went out. One of the black soldiers once shot a hog, and was away for four or five days, and after that we always used to ask about them; a report about the hog came in to Captain Hole; it was at Muirton the soldier broke away.

2226. After leaving Grange Hill that morning, where did you go?—We went further on, but I could not name the place; it was a zigzag road with bread-fruit trees and cocoa-nut trees all along the road, and very few houses.

2227. What time did you return to Muirton?—In the afternoon, before Mr. Cullen's party got back.

2228. *By Prisoner.*] Did you see Dr. Morris when he came home, and how was he armed then?—I did; he had only his sword then.

2229. *By Court.*] What kind of uniform did Assistant Surgeon Morris wear that day, the 18th October 1865?—He wore a patrol jacket of red serge.

2230. Was his sword belt over or under the patrol jacket?—Outside.

2231. Had Ensign Cullen, or any of his detachment, a revolver on 18th October 1865, when they left Muirton?—No; Ensign Cullen never did carry one.

2232. What arms did you or any of your party take out with you on that 18th October 1865?—Rifles and our ammunition; we went armed every place we went.

[The Witness withdraws.

Thirty-first Witness for Defence.

ROBERT SCOTT BRASS, Storekeeper, Kingston, being duly sworn, is questioned by the Prisoner.

R. S. Brass.

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2233. *By Prisoner.*] WERE you in St. Thomas'-in-the-East during martial law, and were you a volunteer; in what company, and what rank did you hold?—I was in St. Thomas'-in-the-East during martial law in October 1865; I was Acting Lieutenant of Astwood's troop, Adcock's column.

2234. Do you remember being with Mr. Watson on a route from Golden Grove under Lieutenant Adcock and Captain Astwood, towards the post office, Iron Bridge and elsewhere, round the district and back to Golden Grove, on Sunday the 22nd October 1865?—I do.

2235. Did you and others go direct over the Iron Bridge when you left the post office, or did you, in company with any one, go elsewhere before you went over the Iron Bridge?—We kept the main road; I was led to believe that that road leads to Holland Bay. There were several members of the troop who went with me that road; Serjeant Allen, Private Watson, and others whose names I cannot at this moment recollect.

2236. Were you ordered to return, and what was the cause of the mistake, as far as you can remember?—I cannot say; I was ordered back, but I heard some one shouting, calling to turn back, and I did. The commanding officers, Captain Adcock and Captain Astwood, were in rear of the party; I rode opposite the second file, on the left. I had no orders where we were to go to, therefore I kept the main road.

2237. Was Private Watson in advance of you, and did you go down the Holland Bay-road as far as he did?—He was one file in advance of me; I cannot say whether I went as far as he did.

2238. Did you see or hear of any dead bodies on that road, which, with others, you so mistook that morning?—I did not see nor hear of any dead bodies.

2239. Did you see any persons with hoes or other digging implements whilst on that route?—I did not.

2240. Did you see any crows about on the trees, or elsewhere on that road, that morning?—I did not.

2241. When did you first hear of the shooting of these three men, the subject of this investigation?—Not until I returned from England, in the month of July last.

2242. *By Prosecutor.*] Did you mistake the road at all between Golden Grove and the post-office?—I did not.

2243. Did the party ride fast or slow from Golden Grove to the post-office?—I think the troop was at a walk most of the time; I cannot recollect now whether we cantered at all.

2244. Do you know if any one at all mistook the road between Golden Grove and the post-office?—I do not know.

2245. How far in advance were you of the main body at the time you arrived at the post-office?—I cannot say that I was in advance of the main body at all; I rode, as I said before, opposite the second file from the head of the column.

2246. Did you all, then, arrive together at the post-office?—We did, as near as I can recollect.

2247. Then how far were you able to go down the main road, as you say, before the shouting you speak of was made?—I should say from 25 to 30 yards, reckoning from opposite the Iron Bridge.

2248. Can you not tell the Court how far in front of you Private Watson was on that main road that morning?—Not more than a horse's length. When I say that, I mean that we were as close as we could possibly ride together; he being in front, and I next to the man who was behind him.

[The Witness withdraws.

Thirty-second Witness for Defence.

No. 634. Private THOMAS GARDNER, 2/6th Regiment, being duly sworn, is questioned by the Prisoner.

Private *T. Gardner.*

2249. *By Prisoner.*] DO you remember martial law; if so, where were you then?—I remember it, I was then at Muirton House.

2250. Where were you when the first detachment left Muirton under Ensign Cullen; where did you go on that day?—I was at Muirton House that day, and I went down towards Grange Hill.

2251. With whom did you go to Grange Hill; what non-commissioned officer was in charge?—There was about six or seven men; I cannot say to a man. Colour Serjeant Webster was the non-commissioned officer. The only other names I know are those of two men of my own company, Privates Doolan and Allen.

2252. Did you hear of, or see any dead bodies on that day at Grange Hill?—We went to Grange Hill, and I did not hear of or see any dead bodies there.

2253. Did you ever see Assistant Surgeon Morris' revolver anywhere at Muirton, if so, what would lead you to that part where it was lying, and how many times in a day would you generally go near it?—I did, going from the guard-room to see the time, you went into the room where the revolver was lying; whenever you went to see the time, or to get the daily allowance of spirits that were served out to us, you could see it.

2254. *By Prosecutor.*] How did you know it was Dr. Morris' revolver?—Because I know the revolver. I have seen it in his possession before, and because I saw Doolan get a hold of it to clean it.

2255. Were you on duty on the day you say you went to Grange Hill with Serjeant Webster, and had you any arms with you; were you riding or walking?—No; I was only on duty going out, that is, for our own pleasure; we had our arms and accoutrements complete; we were riding.

2256. What day was it on which you went to Grange Hill; day of the week, month, and year?—It was on the 18th October 1865; it was Wednesday.

2257. Did you go into any house at Grange Hill?—No, I did not.

2258. Did you see anybody at Grange Hill?—I seen a few women and children.

Private *T. Gardner.*

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2259. Did you speak to any of them?—We axed them if there was any black troops there.

2260. Why did you ask that question?—Because it was an understood thing. Captain Hole gave orders to ask, because they were in the habit of breaking out; breaking away from the party.

2261. And were they in the habit of doing that when out on duty under the command of an officer?—I can't answer that, because I was never out with them.

2262. Did you not know that they were out on duty that morning under the command of an officer?—I know they were out under the command of Mr. Cullen.

2263. At what hour did you leave Muirton, and at what hour did you return to it?—One party might have left about 9 or 9.30 a.m., I could not say to half-an-hour, and returned about 3.30 p.m., as near as I could guess.

2264. How long did you remain at Grange Hill, and where did you go after leaving it?—I could hardly say; we might have stopped there an hour; we came on back the same road.

2265. *By Court.*] How was the room in which you saw Dr. Morris' revolver, occupied?—It was occupied by the officers; a sleeping room at night; and as a court-martial room in the daytime.

[The Witness withdraws.

Thirty-third Witness for Defence.

No. 1147. Private Fielding Wolstenholme, 2/6th Regiment, being duly sworn is questioned by the Prisoner.

Private *F. Wolstenholme.*

2266. *By Prisoner.*] Were you one of the men on the march with Ensign Cullen and Dr. Morris, with others, from Manchioneal, past the Iron Bridge, halting at the post-office on Saturday the 21st October 1865?—I was; I believe, about that date.

2267. What was your rank on that march?—Company Serjeant Major of No. 7 Company, 1st West India Regiment.

2268. Where was Dr. Morris during the time you were at the post office?—He was in a room adjacent to the post office.

2269. Was he well or sick?—He was sick.

2270. Whilst at the post office on that day, did you see or hear of any three persons being shot at or near the post office, Iron Bridge, or grass piece?—I neither saw nor heard tell of any being shot.

2271. Did you hear the report of any guns whilst you were at the post-office that day?—I did not.

2272. From the time you arrived at the post office up to your leaving, did you see Dr. Morris?—I did; I mean that I saw the doctor in the room lying down, as I was walking up and down under the shed.

2273. Where were you on the 18th October 1865 when Ensign Cullen went out?—I was with him at Hayning.

2274. Were you out as company serjeant major on the 18th October 1865 when Ensign Cullen and Assistant Surgeon Morris went up to Hayning and Jericho, instead of Friendship; if so did you see any man shot on that day?—Yes, I was company serjeant major on that day, when we made a mistake about the road, I think it was; I did not see any man shot that day.

2275. Did you hear of any man having been shot on that day?—I did not.

2276. *By Prosecutor.*] What time of day did you arrive at the post-office, and when did you leave it?—On the 21st we arrived about 9 a.m., and left at about 12 o'clock.

2277. Did you see any person at all, of any description, white or black, civilian or otherwise, come to the post-office while you were there?—I saw two volunteers, they were afterwards called, but I took them to be Artillery officers; they came there about 12 o'clock; these two I have mentioned are the only persons I saw of any description come to the post-office while I was there.

2278. Where did you go to from the post-office, and whom did you see on reaching that place?—To Golden Grove; I saw a few of our own men, that is, of 1st West India Regiment, who had gone on previously, and some volunteers.

2279. Did you see anybody (who was not at the post-office when you arrived there) talking to Ensign Cullen at the post-office that day?—I did not.

2280. You have said you were in front of the post-office, walking up and down; were you at the same place and so occupied during all the entire time you remained at the post-office?—No, I did not walk all the time; sometimes I sat down on the steps at the doorway.

2281. Do you know a place called Grange Hill; did you ever go there?—No, not by that name.

2282. On leaving Muirton, on the 18th of October 1865, what road did you take to go to Haining?—I do not know the road, except that it was the main road, till we turned to go to Haining. I think it was a half-moon road; that is, shaped like a half-moon.

2283. What do you mean by a main road, as distinguished from any other road; describe it shortly to the Court?—I mean the proper road, the public road; I do not mean a pathway.

2284. Did you not leave the main road at all anywhere between Muirton and Haining; did you take no short cut over any road not as good as the main road?—No, not before we turned to Haining.

2285. Did the whole of the detachment which left Muirton keep together the whole way until it arrived at Haining, and on the way back?—To the best of my knowledge, they did; I do not remember any being left behind any distance.

2286. What did you, or any of the detachment or officers do at Haining?—We did nothing there; we went to Jericho, a place higher up, I think.

2287. Then did you merely march to Haining and Jericho, and back to Muirton?—Yes; I think we went from Jericho back again to Muirton.

2288. Did you return by the same way, that is, the main road, the whole way, never leaving it?—Well, I can't say whether we got into the same road going back; I know very little about the roads, or the places there.

2289. *By Court.*] You say Dr. Morris was with Ensign Cullen's party on the march to Haining, on the 18th October 1865; how was he dressed at

at the time?—He was in uniform, with, I think, a red serge coat.

2290. Do you know a place called Scott's Run?—No, I do not.

2291. Did you go to any other places that day besides Haining and Jericho?—I do not remember any other place.

2292. You have said that you do not know a place called Grange Hill, by that name; explain what you mean?—I never heard the name before now.

2293. Were you with Dr. Morris the whole of the time you were out on the 18th October. Could any men have been shot by him without your seeing?—I was with him all the time, very close to him, and must have seen him if anything of the sort had been done. Private *F. Wolstenholme.* 15 January 1867.

2294. Were the rifles of that detachment loaded on that line of march from Manchioneal to the post-office?—I cannot remember that; I have forgotten; but it was the custom to have them loaded on those marches.

[The Witness withdraws.

Thirty-fourth Witness for Defence.

James Alexander Wilson, Book-keeper at Golden Grove Estate, St. Thomas-in-the-East, being duly sworn, is questioned by the Prisoner.

2295. *By Prisoner.*] Were you with Mr. Brooks and others from Morant Bay, on Saturday, the 21st October 1865; and state shortly who were with you?—Yes, I was. Mr. Chisholm, Mr. Lowe, Mr. Mais, and several others were with me; those were book-keepers at Golden Grove. Ford's Volunteers were also with us, and Captain Astwood's. *J. A. Wilson.*

2296. Was Mr. Brooks sick on that journey; how was he when you all arrived at Golden Grove, and at what time did you reach Golden Grove?—Yes, he was sick; he was quite sick when we arrived at Golden Grove, and had to go to bed; to go and lie down. We reached Golden Grove at 3.30 p.m.

2297. Were you at Golden Grove on Sunday, the 22nd October 1865; and what was your occupation at Golden Grove on that day?—I was there on Sunday; I was looking after the breakfasts and dinners.

2298. Did you see Mr. Brooks at Golden Grove on that day; when and where was he, and how was he?—Yes. I went into his room to see how he was; he was worse, and I had to order tea and chicken soup for him.

2299. How often did you see Mr. Brooks on that Sunday?—I went into his room three or four times. I went in after 7 and after 9 a.m.; I mean by "after," some 15 minutes or so. I also went again at 1, and at 4 p.m.

2300. Did Mr. Brooks ever leave Golden Grove on that Sunday, and was he able to do so, and where was he during that day?—No, he did not; he was not able to do so, as he was lying down sick the whole day. He was in one of the rooms of the book-keepers' barracks all day.

2301. Look at this book and say whose it is, and in whose handwriting are the entries in pencil?—I picked this book up at Bowden Wharf, Port Morant; the book belonged formerly to Mr. Duffus. The pencil entries on the first blank page are all in Mr. Brook's handwriting. I saw him write them myself; the front part of the page down to the "18th," was written at Bowden; the first part of the reverse of the page down to the printed word "Wednesday," was written at Morant Bay, and the bottom part of that page was written at Golden Grove.

2302. Was there any nurse in attendance on Mr. Brooks, at Golden Grove, and what is her name?—Yes; her name is Fanny Thompson.

2303. What was Mr. Brook's object in making those entries; can you say of your own knowledge?—I cannot say.

2304. When did Mr. Brooks leave Golden Grove?—The following week; he was there from the 21st October, and all that next week, and it was the following week after that he left.

2305. *By Prosecutor.*] At what time, and at what place at Golden Grove, did you see Brooks write that part of the entry which you say was written at Golden Grove?—In the barracks where he was stopping, on the afternoon of the 21st; the Saturday, the day we came up from Morant Bay, about 4 p.m., shortly after we arrived.

2306. When did you pick up the book at Bowden Wharf?—On a Sunday, the 15th October.

2307. You say you picked up the book at Bowden Wharf; how did it come into Brooks' possession?—Brooks, having a pencil, he took the book from me to make his remarks.

2308. How many people were at Golden Grove on that Saturday and Sunday; take a little time, and tell as correctly as you can; volunteers, regular soldiers, overseers, and book-keepers belonging to the estate?—I cannot say, as I did not reckon them; I could not give any idea of their number, but there were a good many.

2309. About how many were in each room in the barracks?—Some rooms had six, and some had four; some lay in the hall; they lay just where they could get anything to lie on; the barracks were all chopped up, and the beds destroyed.

2310. What room did Brooks occupy in the barracks at Golden Grove?—The room Mr. Chisholm now occupies; Mr. Chisholm's room, the overseer.

2311. Was Brooks alone in that room, that is, did he have the entire use of it?—No; there was some more in it too; Mr. McFarlane was in there, and Mr. Lowe; but he was removed afterwards, when he got worse.

2312. Tell the names of all who shared the room with Brooks?—Mr. Ford used to go in there; Mr. Sigismund De Pass, who is now at Bowden Wharf, and Mr. Myers, one of Mr. Ford's men, and Mr. Mais also.

2313. Were there sheets and other linen on the bed, and in the room in which Brooks was?—There was a mattress they got put up there, and a rug, but no sheets.

2314. What was the matter with Brooks, do you know?—He first complained of fever, and afterwards of constipation of the bowels.

2315. Was Brooks undressed, or had he his clothes on when you saw him these several times?—He had on a dark merino shirt and his trousers.

 2316. Where

J. A. Wilson.
15 January 1867.

2316. Where and when did Brooks first complain of the fever?—In coming from Morant Bay on the 21st, the Saturday.

2317. *By Court.*] After Mr. Brooks made the entry at Bowden, in the book shown to you, what became of the book?—Mr. Brooks kept it in possession till he returned from Morant Bay, and brought it to Golden Grove, where he left it, when he went away, in the barracks, and it was found there when the barracks were cleaned up and put to rights. The part that was written at Bowden was on the 15th, 16th, and 17th October.

2318. What were you and Brooks doing at Bowden on the 15th, 16th, and 17th October?—On the 14th we came out of the bush, four of us were there together; we were in the bush the 13th and 14th, and came out on Saturday night, and went down to Bowden, Sunday morning, and remained there till the afternoon of the 17th, when we got into the Bay; Brooks was one of the four.

2319. Is that book in the same state now as when you last saw it in Mr. Brooks' possession at Golden Grove, that is the pages referred to by you?—It is in the same state; I see no alteration or addition.

[The Witness withdraws.

Thirty-fifth Witness for Defence.

William Moore James, Justice of the Peace and Captain of a Volunteer Company for St. David's, being duly sworn, is questioned by the Prisoner.

W. M. James, J.P.

2320. *By Prisoner.*] Were you ever overseer of Duckenfield Estate, and when?—I was overseer of Duckenfield Estate in 1863.

2321. When were you first on Duckenfield Estate, as manager, or otherwise?—In 1853, I was there as book-keeper; in 1856, as deputy manager.

2322. Do you know the grass piece on Duckenfield, near the Iron Bridge, and how often do you believe you have been in there?—I know the grass piece alluded to, perfectly well; I have been there so often I could not say how many times I have been in it; it was my duty when book-keeper to be in there twice a day.

2323. What has that grass piece been used for, and have you ever seen any graves or mounds in it?—For the purpose of cutting grass for the cattle pens. I remember mounds, but not of any extensive height in 1853 and 1854; when I went back in 1863 and 1865, I did not observe them; they were reduced so much that I did not observe them. In fact, it never struck me to look at them at all.

2324. To your own knowledge, state whether any bodies have been buried in that grass piece?—Not to my own knowledge; I never saw any bodies buried there.

[The Witness withdraws.

The Court is cleared for deliberation, and on being re-opened the Prisoner is informed that the Court is of opinion that evidence such as that of the last Witness is irrelevant, and that producing such evidence is a mere waste of time.

Thirty-sixth Witness for Defence.

Francis Thomas Macfarlane, Planter, and formerly Overseer at Amity Hall, being duly sworn, is questioned by the Prisoner.

F. T. Macfarlane.

2325. *By Prisoner.*] Did you accompany Mr. Brooks and others from Morant Bay to Golden Grove, on Saturday 21st October 1865?—I did.

2326. How was Mr. Brooks when he arrived at Golden Grove, and where did he go to?—He was sick when he arrived at Golden Grove, complaining on the whole of the march down, and he came in and lay down in the room I occupied.

2327. Where was Mr. Brooks on the Sunday, and did he ever leave Golden Grove that day?—He was in the room that day; I was ill in the room myself all day; and he was occupying the same room and the same bed with me.

2328. Do you know the post office near the Iron Bridge; as also the bamboo draw-rail in the Duckenfield grass piece; have you ever tested the sight from that post office to the bamboo rail; with whom; can you see any person standing near thereto, and state shortly how and in what manner you did so?—I know them both; I tested it with Mr. Harrison; I stood at the rail and he went to the post office; and then he stood at the rail and I went to the post office; and I could see nothing of him.

2329. *By Prosecutor.*] What was the matter with you on that Sunday at Golden Grove?—I had been laid up for over four weeks with fever, and had only been three days at my work when the rebellion broke out; and I had a sore on my back from a blister, and also was suffering from fever at the time.

2330. Did you leave that room at Golden Grove at any time at all during the entire day, that Sunday?—Not except to go to the outside piazza; I did not do any duty that day; and I never left the barracks except to bathe about 6 a.m.; and then I was not absent more than half an hour.

2331. How long did you walk up and down or sit in the outside piazza?—I was back and forwards during the day; I was quite bad with fever after bathing, and remained in the room all that day.

2332. Was there any other person occupying that room the Saturday night or Sunday?—Augustus Parker Davis, who is now off the island, occupied the room all the time with me and Richard Moyle Wilson; Lowe and De Pass were also backwards and forwards; but I cannot say if they slept there that night; De Pass slept there many nights, but I cannot say he slept there that night.

2333. Which was most sick, Brooks or you?—Brooks was by far the worst, on the Sunday; Brooks was under medical attendance; but I never reported myself sick.

[The Witness withdraws.

Thirty-seventh Witness for Defence.

ALFRED GEORGE BERRY, Civil Engineer, residing in Kingston, being duly sworn, is questioned by the Prisoner.

A. G. Berry.
15 January 1867.

2334. *By Prisoner.*] Do you remember martial law; were you in St. Thomas'-in-the-East during that time, and what position did you occupy then?—I remember marshal law; I was then in St. Thomas'-in-the-East, as a volunteer in Captain Astwood's troop.

2335. Were you at Golden Grove on the 21st October 1865, and did you leave Golden Grove on that day, and where did you go to, and who accompanied you?—I was at Golden Grove on that day; I left Golden Grove and went to the Iron Bridge, to the shop there. Mortimer Brandon, another volunteer, accompanied me.

2336. Is Mr. Mortimer Brandon now in the island?—No.

2337. On your arrival at the post office, did you see Ensign Cullen; were any orders delivered to him, and by whom?—I did not see him on my arrival, but after; he came out of the shop. Mortimer Brandon got the orders; he went into the shop; the centre door; the orders were for the party to go to Golden Grove.

2338. Did you see George Grant Manning at the post office that day; and were you in conversation with him; did he state that three men had been shot there that day?—I saw him that day and was in conversation with him; he did not make that statement to me.

2339. When did you leave the post office that day, and did you do so with Ensign Cullen and his men?—I left with Mr. Cullen; about four or 3.30 p.m.; about then; but I am not sure of the time.

2340. While at the post office did you see three men shot; or did you hear the report of any guns while you were there?—I did not see three men shot, nor hear any guns while I was there.

2341. On Saturday, the 21st October 1865, were you in the grass piece; the grass piece opposite Manning's shop?—Yes; I was there in the grass piece.

2342. While in that grass piece did you observe any dead bodies tied to a bamboo draw rail?—No.

2343. Were you with a detachment under the command of Captain Adcock and Captain Ford, on route past the Iron Bridge on Sunday the 22nd October 1865?—Yes; I was one of the advance guard.

2344. Was there any mistake as to the road near the post office, and what road was it they took in the mistake?—I did not look back, and of my own knowledge, I cannot say; I only know what I was told; I went over the bridge and was 100 yards ahead.

It being now four p.m. the Court adjourns till ten a. m. to-morrow, the 16th instant.

TWENTY-FOURTH DAY, 16th January 1867.

On Wednesday, the 16th January 1867, at 10 a. m., the Court re-assembles pursuant to adjournment: Present, the same Members as yesterday, and proceeds with the Examination in Chief of ALFRED GEORGE BERRY.

A. G. Berry.
16 January 1867.

2345. *By Prisoner.*] WHERE was Mr. Harrison at the time you went over the bridge?—He was with the body of the men at the back.

2346. What caused you to go into the Duckenfield grass piece on the Saturday, 21st October 1865?—I went to look at some canes; some black insects on them, that caused me to go in.

2347. *By Prosecutor.*] Was it a grass piece or a cane piece you went into?—I went into the grass piece first and looked through at the canes.

2348. Was the grass piece into which you went to look at the cane immediately opposite the post office, or to the Golden Grove side of it?—Opposite the post office.

2349. How did you enter the grass piece, by a gate, or how otherwise?—I went through the logwood fence.

2350. How far into the grass piece did you go?—I can't say how far; I dont think above 20 feet or thereabouts from the fence; I went in and turned to the right, and looked through at the canes.

2351. *By Court.*] Was the order Mr. Brandon took to Ensign Cullen on Saturday, 21st October 1865, written or verbal?—I don't know; I did not ask him.

2352. From your position in the grass piece, did you see any bamboo draw rail in the logwood fence?—No, I did not, where I went; but I saw a bamboo fence.

2353. In what cane piece did you notice the black insects?—The cane piece opposite the post-office, beyond the grass piece. I was riding at the time on the road, when I noticed these insects; and after I had been to the post-office and had dismounted, I went in to look at them.

2354. When first did you hear of men having been shot near the Iron Bridge, or on the march from Manchioneal?—It was in November last, 1866, when I returned from Hayti; that was the first time.

[The Witness withdraws.

Thirty-eighth Witness for Defence.

No. 285. Private MORRIS GORDON, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

Private *M. Gordon.* 16 January 1867.

2355. *By Prisoner.*] WERE you one of the men on the march with Ensign Cullen and Dr. Morris from Manchioneal, halting at the post-office near the Iron Bridge on Saturday, 21st October 1865?—Yes.

2356. When you arrived at the post office, was an advance guard sent on, and who was in charge of that advance guard?—An advance guard was sent on; Corporal Hunter was in charge.

2357. Do you know where to?—Yes, Golden Grove.

2358. Whilst at the post office did you shoot or see shot any prisoners; did you hear the report of any guns?—I did not shoot or see shot any prisoners, nor hear any reports of guns.

2359. Where was Dr. Morris during the time you were at the post office?—He was in Mr. Manning's private quarters.

2360. Were you sent out with Ensign Cullen and Assistant-Surgeon Morris on the 18th October 1865; that is, the first detachment that left Muirtown after we arrived there on the Monday?—I never went anywhere else, but from Muirtown to Golden Grove.

2361. Were you ever out with Ensign Cullen and Staff Assistant Surgeon Morris when they went to Hayning instead of Friendship?—No.

2362. *By Prosecutor.*] Where did you remain all the time you were at the post office; that is, what particular part of the building, yard or road?—I was in the shop the whole time refreshing myself.

2363. Did you see anybody at all of any sort, either military, volunteer, or civilian, respectable person or labourer, walking or riding, come to the post office while you were there?—No; I never see anybody at all.

2364. You say an advanced guard went on; of how many men was it composed?—About six, a section.

2365. Did you see it leave the post office?—I see it when it went away from the post office.

2366. Did all the men and the corporal of this guard leave together?—Yes; they march off together.

2367. What did you do with your rifle while you were in the shop refreshing yourself?—I had it slung across my body.

2368. Was your rifle loaded or not on that day?—No; it was not loaded.

2369. Whom did you see at the post office when you arrived there; state fully all the persons you saw; if you do not know their names, describe them as well as you can?—I saw no one that I recollect but Mr. Manning, the postmaster. I saw nobody else.

[The Witness withdraws.

Thirty-ninth Witness for Defence.

No. 1,485. Private JOHN ROCH, 2/6th Regiment, being duly sworn, is questioned by the Prisoner.

Private *J. Roch.*

2370. *By Prisoner.*] Do you rememember martial law in Jamaica; if so, where were you, and under whose command?—I remember martial law; I was then at Manchioneal, under Captain Hole's command.

2371. Where did you go to on Monday evening, the 16th October 1865, during martial law; that is on the day we marched up from Boston to Muirtown?—I went to Betty's Hope.

2372. With whom did you go?—With Dr. Morris and 12 men and one non-commissioned officer.

2373. Did Staff Assistant Surgeon Morris on that evening bring down a large number of refugees; if so, do you remember Staff Assistant Surgeon Morris halting that detachment; if so, for what purpose?—I do not know what you mean by refugees; there were, to the best of my recollection, three females and one old gentleman. Dr. Morris halted the detachment for the purpose of looking for the pin and chambers of his revolver.

2374. Did you yourself on that evening dismount; if so, for what purpose?—I dismounted for the purpose of searching for the pin and the chambers of the revolver. The chambers was found, not the pin.

2375. Then who picked up the chambers; did you see that revolver after that date, if so, when and where, and why should you see it in that particular spot; what led you to go to that spot?—Private Harrison picked up the chambers; I saw it after, up at the house at Manchioneal several days after; up to the 22nd; it was on the window. The room was where we get our allowance of grog, and where you could see the time.

2376. Had Ensign Cullen a revolver?—I never see him with one.

2377. Did you see Staff Assistant Surgeon Morris leave and return on the 18th October 1865; if so, how was he armed, to the best of your recollection?—I did see him; he had his sword on when he started and when he came back; nothing else; no revolver.

[The Witness withdraws.

Fortieth Witness for Defence.

No. 932. Private JOSEPH BEDFORD, 2/6th Regiment, being duly sworn, is questioned by the Prisoner.

Private *J. Bedford.*

2378. *By Prisoner.*] WHERE were you during martial law in Jamaica, October 1865; under whose command were you?—I was at Morant Bay, Port Antonio, and Golden Grove, under Captain Adcock's command.

2379. On Sunday, 22nd October 1865, did you leave Golden Grove with a detachment under command of Captain Adcock, and march over the Iron Bridge near the post office?—Yes.

2380. On that morning did you stop at the post office, and did you speak to any one there?—Yes; stopped for a few minutes there; I changed

changed a saddle; I spoke to the man standing against the post office; I don't know who he was.

2381. After you changed your saddle, did you go over the Iron Bridge, or did you go straight on down the Holland Bay-road?—I went straight on down the Holland Bay-road.

2382. How far down that road did you go?—Between 200 and 300 yards from the post office.

2383. Did you see any dead bodies tied to a bamboo rail fence, or any where else, as far down as you went?—No.

2384. Did you go alone, if not, who accompanied you; give their names?—I did not go alone; James Cox and William Barnes went with me; they were private soldiers of the 2/6th Regiment.

2385. Where is William Barnes; is he dead, and when did he die?—He is dead; but I cannot tell the date; but it is since he gave evidence on Ensign Cullen's court martial.

2386. How far on had the main body advanced when you returned and overtook them?—They had very nearly reached the first village, I do not know its name, when we got nigh up to them; they were setting fire to a house.

2387. *By Prosecutor.*] Did you see any bamboo rail fence on the road on which you rode that day from the post office?—I did not notice; I have only been there once; never been there since, so I could not say.

2388. How do you know it was the Holland Bay-road you went on that morning; did you know that at the time, or have you learnt it since?—I asked the man at the post office that morning the name of the two ways.

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2389. How did you arrive at the post office; with the main body or before, or after it?—With them.

2390. Did you change the saddle before or after the main body left?—Before the main body left.

2391. How is it, then, that you did not go on with the main body, but went on a wrong road?—We rode on that road before the main body; me and the other two men; we went on first before anybody else.

2392. Who sent you on, and what particular order did you receive?—No one sent us, and we received no orders.

2393. Then why did you go on?—We had a race down the road for our own amusement, and thought to be back before the party had started.

2394. And are you rightly understood to say that the race was before any of the party at all left the post office to go in any direction?—Yes, we started before the party offered to start.

2395. And are you rightly understood to say that on your return the rest of the party were all onwards, near the first village?—Yes.

2396. On your return to the post office from that race, did you overtake or pass any one on that road?—No.

[The Witness withdraws.

Forty-first Witness for Defence.

No. 551. Private JOHN ALLEN, 2/6th Regiment, being duly sworn, is questioned by the Prisoner.

2397. *By Prisoner.*] Do you remember martial law in Jamaica; if so, where were you, and under whose command?—I remember it; I was then at Muirton House, under Captain Hole's command.

2398. Do you remember the 18th October 1865; if so, where did you go on that day, and with whom?—Yes, I remember that day; we went with a party, under Colour Sergeant Webster, to a place called Grange Hill.

2399. When you were at Grange Hill, did you hear of the black detachment that had marched out that morning having been there?—I saw a black detachment go out that morning, but I did not see it afterwards till they returned, nor did I hear of it at Grange Hill.

2400. Did you see any dead body or bodies there?—I saw no dead body at Grange Hill.

Private *J. Allen.*

2401. Do you remember seeing Staff Assistant Surgeon Morris' revolver anywhere; if so, when, and where, and what would lead you to that particular spot?—I saw it on the 17th, up to the 22nd October; I saw it in the parlour where we were served with our grog, on the window bottom; no one else but Dr. Morris in the detachment had a revolver.

2402. Did you hear that any person had been shot at Grange Hill that day?—I did not.

2403. *By Court.*] Was the grog served out to the men in the room which the officers of the detachment occupied?—Yes.

[The Witness withdraws.

Fifteenth Witness for Defence recalled.

No. 22. Private JAMES COX, 2/6th Regiment, being recalled, and re-sworn, is questioned by the Prisoner.

2404. *By Prisoner.*] WERE you at Golden Grove with Captain Adcock during martial law?—I was.

2405. On Sunday, the 22nd October 1865, did you leave Golden Grove with a detachment of troops and volunteers, under Captain Adcock, and march to Amity Hall, over the Iron Bridge?—I left Golden Grove with a detachment of two more men of my own regiment besides me, and some volunteers; but I did not at that time go over the Iron Bridge; I went straight along the road.

Private *J. Cox.*

2406. Did you stop at the post office before you went on straight along the road?—Yes.

2407. What was the cause of your stopping at the post office; and did you speak to any one there, and do you know the person's name?—The cause was that Private Bedford, who was with me, had his saddle broken; some portion of it somewhere was broken, and he stopped to change it; I only

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I only spoke to the men of my own party, who were with me at the time.

2408. At what time of the day was this, as far as you can remember?—I could not say the hour, but it was early in the morning.

2409. How recently have you been on that road, the Holland Bay-road?—I went down there at the latter part of the old year; this December last.

2410. How far down on that road did you go on the Sunday morning, and did any one accompany you, say who, and are they here?—I went down between 200 and 300 yards; Private Bedford and Private Barnes were with me that Sunday morning, and Barnes is now dead.

2411. Did you see any dead bodies on that road on the Sunday morning, or tied to a bamboo draw rail fence near the road?—I did not.

2412. When you returned, was your detachment still at the post-office, or had they moved on, and where did you overtake them?—They had moved on; I overtook them at the next village.

2413. Did you see any person or persons with hoes and other digging implements on that road that Sunday morning?—No.

2414. On your last visit to the Holland Bay-road, did you in company with any one examine a bamboo draw rail fence in a grass piece opposite the post-office?—I was by myself. I saw the bamboo fence.

2415. *By Prosecutor.*] Had you ever been from Golden Grove to Amity Hall Estate, or anywhere upon the road which you call the Holland Bay-road, before the Sunday the 22nd of October?—No.

2416. Were you with the two men of your own regiment the first to arrive at the post-office, after leaving Golden Grove that Sunday morning?—No; we arrived there with the volunteers; we were next the mounted volunteers; they were first, and we next them.

2417. Did the whole column then arrive at the post-office together?—I believe so; with the exception of some men who went as an advance guard; they might have been there some few minutes before us.

2418. How long after you arrived at the post-office was it that you left with Bedford and Barnes to go on the road you call the Holland Bay-road?—We stopped at the post-office about some five minutes.

2419. Were you then the first to leave the post office?—Yes.

2420. Did you ride slowly, or how, down the road?—I rode as fast as the horse could go.

2421. Did you pass any one going down, or did you overtake or pass anyone returning on your ride on that road?—I saw no one, neither going nor coming, beside the two men who were with me.

2422. Where was the rest of the party which left Golden Grove when you returned to the post-office?—They had gone on.

2423. Had they all gone on; did you see no one at the post-office when you came back to it?—There was none of the body who went with me at the post-office, as I saw; I mean none of the volunteers.

2424. Did you see the advance guard at the post-office, when you arrived there from Golden Grove that morning?—I saw some men there; but I do not know if they were the advance guard, as I did not know the gentlemen in front, by person.

2425. Did you see any bamboo draw rail fence on your ride down the road on the Sunday morning?—I did.

2426. What induced you to go down that road?—A race, we took there.

2427. Whereabouts is that bamboo fence?—It is about 50 paces from the post-office, as near as I can state.

2428. You have spoken of this road as the Holland Bay-road; did you know it to be the Holland Bay-road at that time?—Not on the 22nd October I did not.

2429. When first then did you know it as such?—When I was down there in last December.

2430. Are you the same man who gave evidence under the name of James Cox at the court martial for the trial of Ensign Cullen?—I am.

[The Witness withdraws.

Forty-second Witness for Defence.

No. 730. Private George Christopher Blythe, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

Private *G. C. Blythe.*

2431. *By Prisoner.*] Were you one of the men on the march with Ensign Cullen, Dr. Morris, and others, from Manchioneal, past the Iron Bridge, halting at the post-office, then on to Golden Grove, on the 21st October 1865?—Yes.

2432. Can you say what time of the day you arrived at the post-office?—I had no time-piece; but, judging for the time, I think it was about 9 a.m.

2433. Was an advance guard sent on to Golden Grove on that day from the post-office, and if so, who was in command, to the best of your knowledge?—There was an advance guard; Corporal Hunter was in command.

2434. While at the post-office, did you hear any shouting "prisoner," prisoner get away?—No.

2435. Whilst at the post-office, did you see any prisoners brought in, and did you shoot, or see shot, any persons on that day near the post-office?—I saw no prisoners brought in, nor did I shoot, or see shot, any persons that day.

2436. Did you hear the report of any guns on that day at the post-office?—No.

2437. Where was Dr. Morris during the time you were at the post-office?—He was in Mr. Manning's room.

2438. Did you go out with the first detachment that left Muirton under command of Ensign Cullen, Staff Assistant Surgeon Henry Morris being in medical charge?—Yes.

2439. Were you ever at a place named Grange Hill; if so, when?—No.

2440. *By Prosecutor.*] What particular part of the post-office premises did you remain at, while the detachment was there?—Not at one place I was everywhere about there.

2441. From the time you arrived at the post-office until you left that Saturday, did you see anybody at all come to the post-office; this means military,

military, volunteers, labourers; man or woman?—I did not take notice of any one come; there might have been some, but I did not notice them.

2442. Whom did you see at the post-office when you arrived there; if you do not know names, describe the persons?—I saw Mr. Manning and a brown man there; nobody else.

2443. Was your rifle loaded, or not, on that day?—No.

2444. Did you leave the premises? that is, the post-office, at all that day, from the time you went there till you left to go to Golden Grove?—I did not leave it, but was walking about; that was all.

2445. How soon after you arrived at the post-office was the advance guard sent off, and of what did it consist?—They did not stop at all; they went on. Me can't rightly say how many men there were. I did not count them; there were more than seven; but I can't say whether more than eight.

2446. Explain what you mean, when you say they did not stop at all, they went on?—They did not stop at the post-office; they went on.

2447. Did they march directly on as they came over the bridge on to Golden Grove?—Yes.

2448. Did that same advance guard then come on with you from Manchioneal that morning?—Yes.

2449. Was it with the main body, or was it an advance guard all the way from Manchioneal?—There was a rear guard and an advance guard. It was an advance guard all the way from Manchioneal.

2450. And are you rightly understood to mean that that advance guard went straight on to Golden Grove without halting at the post-office?—Yes.

Private *G. C. Blythe.*

16 Jan. 1867.

2451. Did you ever hear the name of Grange Hill called; if so, tell when and where, and in what respect?—Not to my remembrance.

2452. To what place did you go when, as you say, you went out from Muirton with Ensign Cullen and Doctor Morris, the first time you went out after arriving at Muirton?—We went to a place, "Hayton," or something like that, when we miss the road.

2453. What road did you take to go to that place?—I can't give the description, because I not live there. I could show you the road, but I don't recollect much about it; some part is hill and some part level.

2454. Did you ever see a man shot during martial law?—No.

2455. When did you go to St. Thomas-in-the-East, and when did you leave it; that is, during how much of the martial law were you in the disturbed district?—It was last year; but I cannot remember the time or the month. I was out with the detachment all the time; but I was only a recruit then; it was in October, but I cannot say the date.

2456. *By Prisoner.*] How long have you been in the service?—About a year and six months now.

2457. Do you remember Staff Assistant Surgeon Morris speaking to you on the line of march from Muirton to Hayton; if so, what did he say to you, and how was he armed?—Yes; I recollect his speaking to me. He said he would recommend me for lance corporal; that is all. I can't remember now how he was armed.

[The Witness withdraws.

Forty-third Witness for Defence.

No. 740. Private George Leslie, 1st West India Regiment, being duly sworn, is questioned by the Prisoner.

2458. *By Prisoner.*] Were you with Ensign Cullen, Staff Assistant Surgeon Morris, and others, on the march from Manchioneal, passing over the Iron Bridge, and halting at the post-office on Saturday, the 21st October 1865?—Yes.

2459. While at the post-office, did you hear any shouting of "Prisoner, prisoner, get away," or any words to that effect?—No.

2460. Did you shoot, or see shot any prisoners on that day while you were at the post-office?—No.

2461. Where was Dr. Morris during the time you were at the post-office?—He was sick, lying down, into a little room; he took sick on the road going.

2462. Was an advance guard sent on to Golden Grove on that day; who was in command, and when did it leave the post-office?—I don't remember now.

2463. What were you doing all the time you were at the post-office, or about the premises?—All that I did was to go to the river and bathe a few minutes, and then come back again.

2464. Do you know Corporal Hunter, of the 1st West India Regiment?—Yes.

2465. Was he with that detachment on the 21st of October 1865?—Yes, he was; he was sent to show the road to convey the troops to Golden Grove.

2466. When did you go to bathe; state as near as you can the hour?—About 10.30 a.m.

Private *G. Leslie*

2467. Did you see Corporal Hunter at or about the post-office immediately before you went to bathe?—Corporal Hunter was there; he halted his men under a tree. I saw him away where he halted.

2468. *By Prosecutor.*] Did you see Corporal Hunter at or about the post-office when you returned from bathing?—Yes, he was there.

2469. At what hour of the day, as near as you can judge, did the detachment leave the post-office?—It leave at 3 p.m.

2470. Did Corporal Hunter leave with the detachment at that time, and to what place did you all go?—He was sent on in front; we went to Golden Grove.

2471. When you say Corporal Hunter was sent on in front, explain what you mean; how far in front?—Corporal Hunter fall in his men, and got the order to march; then we fall in, and he was far away in front; this was from the post-office.

2472. How long after Corporal Hunter did the rest follow?—There was no time; as he marched off, we were falling in to march to Golden Grove.

2473. Was your rifle loaded or not, on that day?—Not loaded at all that day. Captain Hole gave me an order to discharge it at Manchioneal,

Private *G. Leslie.*

16 January 1867.

for it had an old load into it. This was the evening before I went on that march.

2474. What was done with the rifles of the detachment while they remained at the post-office on that day; I mean, where were they put?—I can't recollect now; mine was lean up against the house.

2475. During all the time you were at the post-office, did you see anybody at all come there; this applies to military men, volunteers, labourers, men and women?—No, I saw no one that I can remember now, but the man carrying the post, the postman.

2476. Whom did you see at the post-office when you arrived there; tell all; and if you do not know names, describe the persons?—I met the man who was stopping there; I do not know his name; no person else.

[The Witness withdraws.

The Prisoner here intimates that he has no further witnesses in attendance to-day, and therefore respectfully craves the kind consideration of the Court, and trusts that they will excuse this failure on his part, which has been caused by the rapidity with which yesterday and to-day the witnesses have been disposed of.

The Court accordingly, at 3.10 p.m., adjourns till 10 a.m. to-morrow, the 17th instant.

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17 January 1867.

Twenty-fifth Day, 17th January 1867.

On Thursday, the 17th January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment; present, the same members as yesterday.

The Prisoner, Staff Assistant Surgeon Morris, not being present, his absence is accounted for by

Medical Witness to Prisoner's absence.]—Staff Surgeon Dunlop, who being duly sworn, informs the Court that Staff Assistant Surgeon Morris is labouring under a bilious attack at this moment of such a nature as prevents his attending before the Court; and in his opinion he will not be able to attend before the day after to-morrow, the 19th instant. Under these circumstances, the Court adjourns till 10 a.m., Saturday next, 19th instant.

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19 January 1867.

Twenty-sixth Day, 19th January 1867.

On Saturday, the 19th January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment; present, the whole of the members.

Medical Witness to Prisoners absence.]—The prisoner, Staff Assistant Surgeon Morris, being again absent, Staff Surgeon John Dunlop is called into Court, and, on his former oath, states that Staff Assistant Surgeon Morris is still sick, suffering now from fever and unable to appear before the Court; and that having just seen him, he does not believe he will be able to attend before Tuesday next, the 22nd instant.

The Court therefore adjourns till that date, viz., 10 a.m., the 22nd instant.

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22 January 1867.

Twenty-seventh Day, 22nd January 1867.

On Tuesday, the 22nd January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment; present, the whole of the members.

Medical Witness to absence.]—The prisoner, Staff Assistant Surgeon Morris, being still absent; Staff Assistant Surgeon James Doran, being duly sworn, informs the Court that he has been with Staff Surgeon Dunlop in medical attendance on the prisoner, who is still suffering from low fever and confined to his bed. That he has seen Assistant Surgeon Morris this morning, and that he does not believe he will be able to appear before the Court till the 25th instant.

The medical witness having withdrawn, the Court is closed for deliberation, and on being re-opened it is announced that it stands adjourned till 10 a.m., 25th instant.

Twenty-eighth Day, 25th January 1867.

On Friday, the 25th of January 1867, at 10 a.m., the Court re-assembles pursuant to adjournment; present, the whole of the members and the Prisoner.

Forty-fourth Witness for Defence.

No. 9. Colour Sergeant Jasper Webster, 2/6th Regiment, being duly sworn, is questioned by the Prisoner.

Colour Sergeant *J. Webster.*

25 January 1867.

2477. *By Prisoner.*] Were you stationed at Muirton on the 18th October 1865?—I was.

2478. Where did you go to on October 16th, 1865, and for what purpose; who accompanied you, and what occurred on the march back?—I went with Dr. Morris, and a party of 12 men to Betty's Hope for the purpose of bringing to Muirton refugee ladies; I recollect on the march back Dr. Morris called a halt, about a quarter of a mile from the house we had been to; he called to me that he had lost the pin of his revolver, and asked me to assist him to find it; we searched about, but did not find the pin; but Private Harrison, of my company, picked up the chambers.

2479. Had Dr. Morris any revolver on the 18th October, a Wednesday, when he left with Ensign Cullen. How was he dressed, how did he wear his sword belt; and did you go out on that day, if so to what place, and at what hour did you leave Muirton, and when did you return?—I saw Dr. Morris on that morning, I was close to him and he spoke to me; he had no revolver; he was dressed in one of those loose serge tunics; his sword belt was outside his tunic; I recollect going out with a party of six men on the 18th to a place called Grange Hill; but I did not then know the name of the place; I think it was between 10 and 11 a.m., when we went out, and we returned between three and four p.m.

2480. Do you remember seeing near the old road or track at Grange Hill, some old broken-down buildings and the old busha's house?—Yes, we halted there.

2481. Near this old road or track and old buildings did you see two trees in particular; do you know their names, and what circumstances took place connected with those two trees that caused you to know the names of them?—I recollect two trees in particular there; they were bread fruit trees; two of the men with me wanted to take some of the fruit home, saying they knew them, and that they would make a good dish.

2482. Were these two trees near each other; did you go near to them, and did you see a dead body or any dead bodies there or near to the trees on that day?—They were about 10 or 12 paces from one another, I should think; I went near the trees, and I saw no dead body there.

2483. What was your rank whilst at Muirton, who was senior sergeant there?—I was then colour sergeant and the senior sergeant there.

2484. *By Prosecutor.*] Did you speak to any one at Grange Hill?—No; only to my own men.

2485. Did the party go armed; that is, the six men with you, who went to Grange Hill?—Yes.

2486. Did you go into any house while out that day?—No.

2487. You have said you spoke to no one except your own men; did you see any one at this place?—No.

[The Witness withdraws.

Forty-fifth Witness for Defence.

Thomas Manners, Coroner and Justice of the Peace, Member of the Royal College of Surgeons of Edinburgh, practising in St. Dorothy's, being duly sworn, is questioned by the Prisoner.

T. Manners, Coroner.

2488. *By Prisoner.*] How long have you been practising as a medical man; what offices have you filled?—I have been practising as a medical man since 1847; I was assistant surgeon for 10 years in Her Majesty's service; I have already mentioned that I am now a coroner and justice of the peace.

2489. Have you had any experience in respect of military surgery relating to fractures of the human frame, gunshot or other wounds?—I have seen a good many gunshot wounds involving fractures both in my military and my private practice.

2490. Have you had any experience with regard to the exhumation of dead bodies buried without coffins?—I have.

2491. When first did you see the bones in the engine house; did you then make notes; in whose presence, and was it with the aid of others?—On the 12th November last was the first day; I also saw them on the 19th, 20th, and 21st of the same month; I made notes at the different times. Dr. Allen, I think, was present the first day, and Dr. Bowerbank was also there a short time too; I made the notes myself without the aid of others.

2492. State fully, and as accurately as you can by your notes, or otherwise the number of bones in excess or otherwise for the three bodies, their fractures, general condition, appearances, and smell?—There are three bones in excess; there are a considerable number of bones deficient in the three skeletons; at a rough guess, I should say about 144, the greater portions being those of the hands and feet; one of the vertebræ is fractured, and two of the skulls, and two pelves; the bones are perfectly devoid of smell and perfectly dry.

2493. Have you seen bones exhumed having been buried about 12 months without coffins; state, as accurately as you can, any cases similar to this, not omitting the character of soil and depth of soil; what has been your experience about soils in this colony in reference particularly

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larly to decomposition?—I exhumed myself, on the 9th November, last year, a body which had been buried at the depth of four feet without a coffin; the burial took place on June 25th, 1865; I, also, last week exhumed the leg of a man which had been amputated by me; this had been buried 10 months and 11 days, at a depth of 12 inches by measurement. The first case I have given was buried in a heavy rich soil, on a cane piece; the leg had been buried in a dry sandy soil. In the first case, that of the body in the cane piece, I found the bones blackened and heavy, and with a very offensive smell; the ligaments were attached to the vertebræ, and I made a section of the thigh bone, and found the marrow still in it, and with a very bad smell. In the case of the leg, the lower part of the leg, the tibia, and foot, I found the ligaments and part of the muscles adherent; the bones were heavy and dark coloured; the smell was very strong.

2494. Do you think that vertebra was fractured by a bullet; if not, state your reasons; have you noticed any recent fracture about that pelvis, if so, where?—I certainly do not think the vertebra I spoke of was fractured by a bullet; if it had been broken by a bullet the fracture would have been greater than it is; the odontoid process would not have been as it now is; and had it been done by a bullet, the fracture must have taken place from behind and not in front; there is a recent fracture in one of the pelves, on the os inominatum, on the right side.

2495. Do you think, judging from the state in which you first saw these bones, that they could have been in the ground (without coffin) only for 11 months; state your reasons fully; can you account for the absence of clothing?—I certainly think they had been buried for a longer period; this opinion is grounded on the fact that the bones were in such a dry state, from their being so devoid of smell, and so different from those I have exhumed myself. I account for the absence of clothing from their having been so long buried that it had disappeared.

2496. Do you think that the bones produced as the bodies in question present appearances of being all buried on the same day in the same grave?—In my opinion one of the skeletons has been buried longer than the other two.

2497. If the bodies had been buried for only 11 months and clothed at burial, must there have been a large quantity of clothing when exhumed?—I should say there would have been a good deal; but, of course, that depends on the quantity they had on.

2498. Would the interment of three bodies together in the same grave hasten or retard decomposition?—Retard it.

2499. Could the injuries you saw on the skulls have been produced by other means than a conical ball; state your reasons for the opinion you have formed?—They might; one of the skulls has a fracture right on the top of the head, and I do not believe that a person firing at another could put a bullet in that way. From the extent of the injuries, also, I do not think they could have been inflicted by a conical ball.

2500. Are those injuries to the two skulls such as might have been produced after death; state your reasons for the opinion you have formed?—In my opinion they might have been produced after death; my opinion is formed from the fact that the wound on the top of the skull could only have been inflicted from above downwards; and, also, because the appearances exhibited correspond with those described by recent writers on gunshot wounds as inflicted after death.

2501. Did you ever see any bones of a man at camp supposed to have been those of a convict of the name of Jones; what became of the skull, what inside was found, and where is it now?—I saw the bones of a man said to be those of a convict, and I saw the Penitentiary mark on his clothes. I took the skull, and it is locked up; brain was found inside. I do not know of my own knowledge where it is, but if allowed to leave I could get it.

2502. *By Prosecutor.*] Can you give the Court an idea of the size of the bones which you say are deficient; are there any bones now in the engine-room corresponding with the last ones?—Some of them are about an inch to an inch and a half in length; there are bones of the hand and feet in the engine-room similar to those deficient.

[The Witness withdraws.

Forty-sixth Witness for Defence.

Izett William Anderson, Doctor of Medicine of the University of Edinburgh, practising in Kingston, being duly sworn, is questioned by the Prisoner.

I. W. Anderson, M.D.

2503. *By Prisoner.*] How long have you been in practice in the West Indies; have you held any and what appointments under Government?—I have been in practice in the West Indies about seven years; I have been one of the resident surgeons of the Colonial and Seamen's Hospital of Demerara, and I have been acting surgeon to the General Penitentiary in this city for more than a year, the acting surgeon for the police in this city, and for 18 months I was the surgeon of the Kingston Hospital.

2504. How often have you examined the bones in the engine-room; and did you, on any occasion, when examining them, take notes of their condition, number, &c.; if so, can you produce them to the Court?—I have examined the bones on several occasions, how many I cannot state. On the 31st October; the 3rd of November, I took notes which I can produce.

2505. Did any one for the prosecution at any time, when you were taking notes, derive assistance from you in order to make or complete certain notes that he was then preparing?

The prosecutor objects to this question for the following reasons:

The witness may be asked to state facts relating to the subject matter under inquiry, but not questions which are calculated to impeach the professional knowledge of any other witness.

The prisoner replies that the object of the question is to show to the Court, that the number of missing bones did not come under the direct observation of Dr. Kerr, a witness for the prosecution; but after Dr. Anderson had observed it.

The prosecutor declining to make any rejoinder,

rejoinder, the Court is cleared for deliberation, and decides that by the prisoner's own showing, as given in his reply, the question is an irrelevant one, and therefore inadmissible.

2506. Assuming that it has been proved on the part of the prosecution that the grave at Duckenfield was completely emptied of all its bones, contents, &c., how do you account for the fact that more than 140 bones are wanting to complete these skeletons?—I can only imagine that they have decayed.

2507. Can you give the Court an idea of the size of any of the missing bones; in short, are the majority of the missing bones of such minute size as to render it likely that they would escape observation, if the exhumation of the skeletons was properly conducted?—Some of the missing bones are an inch and three-quarters, to two inches in length. The majority of the missing bones are not of such a size as should escape observation, had the exhumation been properly conducted.

2508. If the bodies had been buried for 11 months and a few days only, would these missing bones have decayed?—Some of the very small ones might; but the majority would not.

2509. Have you had under your care any patients wounded by conical bullets?—I have.

2510. Can you give an example from your own experience, of the effect of an Enfield bullet striking the head?—Yes, I can; a patient came under my care in the Kingston Hospital about three months after the termination of martial law; she was wounded, and I extracted from her face an Enfield bullet which I now hold in my hand.

2511. Do you believe that if a portion of skin was exhumed from a grave, it would shrink up and disappear in a few minutes?—It is quite impossible; if the skin was of sufficient strength, as to allow of its being removed from the grave.

2512. Do you believe that the bones produced for the three bodies could have been in the ground for only 11 months and a few days?—Certainly not.

2513. Do any of the bones for the three bodies present in your opinion appearances of being longer buried than others?—I think so.

2514. Have you seen the fractures in each of the three skulls now in the engine-house?—I have only seen fractures in two of the skulls.

2515. Supposing, for the sake of argument, that the injuries in the two skulls in the engine-room were produced by Enfield bullets, which appears most likely, simply from inspection of them, that they were wounded at 11 paces or 800 yards?—Eight hundred yards, I should say.

2516. Is it your opinion that an Enfield bullet fired at a distance of 11 paces could produce a transverse fracture of the centre of the lower jaw, cause the same kind of fracture in the first bone of the neck, then pass downwards and fracture one of the shoulder blades of the same body; can you give reasons for the opinion you express?—I think it is impossible; my reason is that the ball after breaking the jaw and the first vertebra of the neck would have to pass at a direct right angle to its course, in order to break the scapula; and I do not think that an Enfield bullet fired at the distance of 11 paces could change its course in this extraordinary manner.

2517. Can you state positively that any of the injuries of any of the bones were produced by an Enfield bullet; could they have been caused by a spherical bullet, or could the injuries have been produced by any other means?—I cannot positively state that any of them were caused by an Enfield bullet; I think they could have been caused by spherical bullets, or by other means.

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2518. Do you believe that the portions of bone marked 2 and 3 are in excess, and do not belong to any of the three skeletons?—I think probably they are in excess.

2519. At any of your examinations of the bones, did you observe any of the anterior superior spinous processes absent?—I did notice that one was absent at my last examination, but I did not notice them at the first two.

2520. Do your notes taken contain any reference to fragments of bones then in the engine-room?—Yes, they do, in notes taken on 3rd November, and in notes taken on 31st October.

2521. Could some of the injuries which you have seen in the bones have been made after death?—Yes, they all might.

2522. When you first examined the bones, and saw them laid out on the tables as for each body, was the skull attached to the bones of the body on the south table at all injured or smashed; was that body the one of the tallest and largest man of the three?—No, the skull on the south table was perfectly uninjured; that was the body of the longest of the three.

2523. Did you observe any clothing attached to any of the bones, and if so, what quantity?—About a square inch of decayed cloth was attached to one rib; that was all the clothing.

2524. Did you go to the Duckenfield grass piece, to the spot where the three bodies are alleged to have been buried; did you take some of the earth; what sort of soil was it?—I did go there; I took some of the soil, and it appeared to be a brick mould.

2525. What do you know about the exhumation of a man of the name of Jones at Up Park Camp; did you see the soil there; what sort of soil was it?—I saw some of his bones exhumed, and I saw the soil; and it also appeared to be a brick mould.

2526. What appearances were there about this grave, and body of Jones; in what state was it?—There were no particular appearances that I recollect about the grave; the body had been evidently buried in a doubled-up position; one part of it at a depth of from 18 to 20 inches, and another part between two and three feet; there were masses of soft animal matter which smelt very offensively; many of the bones were attached to one another by the ligaments; there were large pieces of fascia, and large pieces of periosteum; the cartilage could also be observed on some of the bones; there were large pieces of clothing, many of them more than a foot square; and the red paint on them was very distinct, and there was also a large quantity of hair.

2527. Look at No. 4 ilium; is there apparently a recent fracture on it; when did you first observe it, and was it so on your first examination of the bones?—There is a recent fracture on it; it was not there when I first examined the bone; I first noticed it a few days after Dr. Scott stated in evidence that he had fitted the fragment of bone to this ilium.

2528. Without that fracture could No. 1 bone fit?—I cannot say, not knowing the sized piece of bone that was broken off.

2529. Can you tell the date of the exhumation of Jones in the year 1866 at Up Park Camp, when

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when you saw the bones?—I am not quite sure, but I think it was in November.

2530. To what examination of Dr. Scott did you just now allude; his examination in Ensign Cullen's case, or Dr. Morris's case?—I read the evidence in the newspaper, but I am not quite certain whether it was on this trial or the last.

2531. *By Prosecutor.*] Are there in the engine-room any bones corresponding with those which you say are missing?—Yes.

2532. Do you know of any country in which, or of any conditions under which, the dead body of a human being would become completely decomposed within twelve months?—I do not know of any.

2533. The last question you are requested to understand does not mean to include decomposition of the bones?—No; I understood by decomposition, that the entire disappearance of the soft parts of the body only was meant.

2534. Are the opinions of medical men, so far as you know, quite in harmony on the subject of decomposition?—No; opinions differ very much.

2535. Is that which you call a new fracture the part of the ilium to which No. 1 bone was fitted by Dr. Scott, or is the fitting of the two pieces independent of that new fracture?—The fitting of the two pieces is independent of the new fracture; the part newly fractured is a continuation of the line where these two join.

[The Witness withdraws.

Forty-seventh Witness for Defence.

The Honourable LOUIS QUIER BOWERBANK, Custos of Kingston, Fellow of the Royal College of Physicians of Edinburgh, and practising in Kingston, being duly sworn, is questioned by the Prisoner.

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2536. *By Prisoner.*] At what colleges have you studied; how long have you been practising in your profession; what medical appointments have you held?—I have studied in the London University and in the University of Edinburgh; I have been upwards of 30 years in practice in Jamaica; I have held police appointments, and directly and indirectly prison appointments; I have also been Acting Surgeon on different occasions to the Penitentiary, and also acted as Physician to the public hospital in this city.

2537. Have you had considerable experience in fractures of bones, gunshot and otherwise, and of bones exhumed (not buried in coffins)?—I have had very active practice in Jamaica for the last 30 years, and during that time have of course seen many fractured bones; I have also seen several gunshot wounds, but cannot mention their number; I have not seen exhumed beyond three or four bodies which had not been buried in coffins previous to this inquiry.

2538. Have you recently made experiments in gunshot wounds and other wounds on bones?—I have; several experiments since the commencement of this inquiry.

2539. Have you since the commencement of this inquiry seen a body either at or very shortly after the time of exhumation near Up Park Camp?—I saw the body of Jones, the convict, which had been exhumed; I think it was the same day it was exhumed on which I saw it.

2540. Have you had your attention called to the evidence given in this Court about the remains and grave of Mr. Hire; yes or no?—My attention was called to the evidence of a witness on that point.

2541. Have you had experience in different soils in this Colony?—I know something, not much, about the different soils.

2542. When first did you see the bones in the engine-house, and in whose presence?—I saw the bones first on the 31st October 1866; if I recollect rightly I first saw them in the presence of Dr. Anderson and a serjeant, and about an hour afterwards Dr. Kerr came in; Dr. Campbell and Dr. Steventon were also present.

2543. Have you any knowledge of the custom of the lower orders in burying dead bodies, two or more together in the same grave, with and without coffins?—During the prevalence of epidemics it is a common practice to bury bodies, two, three, or more in one grave or pit; I think I have seen upwards of 90 in one pit during cholera.

2544. Were the bones in the engine-house laid out then as they were laid out when you last saw them; when last did you see them?—I last saw them two or three days ago; they were then laid out in a perfectly different way to what they had ever been laid out before.

2545. Can you describe shortly what is the difference in the alterations as formerly and as now laid out?—Formerly they were laid out on three tables, and numbered 1, 2, and 3; subsequently the relative position of the tables was altered, and the last time I saw the bones many of the most important ones had changed places altogether; I have not examined the skeletons as they stand at present, but I trust to my notes taken previously.

2546. Did you take any notes of what you saw of the bones as laid out in the engine-room in three sets, at first; tell as accurately as you can the number, state, and condition of those bones at that time?—I did; out of the three skeletons, there were about 145 bones missing, and there were some bones supposed to be in excess, at first; the bones for the most part were perfectly scentless, there was no unpleasant smell about them, some of them appeared to have been buried for a longer period than the others; some of the long bones, as the fibulæ were dry, light, friable, and disintegrated, large portions of the animal portions of the bone seemed to have disappeared, several of the ribs and all the breast bones appeared to me to have been buried a long time; other portions of the skeletons presented a much fresher appearance, and the fractured portions of them were sharp, clean, and well defined.

2547. Can you state anything as to any hair, or clothing, or brains, being present when you first saw those bones in the three sets; did you make search in the boxes in the room?—When I saw these remains, there were a very few woolly flocks of hair attached to them, very little hair indeed; there was a very small portion of clothing attached to a rib, which appeared in very good preservation. I do not think this piece of clothing was more than a square inch or so; brains there were none, not the slightest appearance of brain. I examined the interior of the boxes carefully, as also the straw in which the remains had been packed; these were quite unsoiled,

soiled, and presented no appearance of any remains of soft portions of the body.

2548. From their appearances and your experience, can you state whether those bones were, in all probability, buried only for 11 months and about four or five days, or do you think they must have been longer in the ground, as well as some longer than others?—From my experience I believe those bones, that is, all of them, had been buried much longer than 12 months, and some of them longer than others.

2549. How do you account for the absence of so many bones (about 140) from these three bodies, if the exhumation be presumed to have been properly made by Assistant Surgeon Kerr?—I can't account for it at all, if three bodies had been buried in one grave for only a year, all the bones with very little care ought to have been taken up; that is my experience.

2550. Suppose all the bones were carefully taken up, would you or not attribute the absence of so many bones to age or decay, or what else?—I am inclined to think that some of them were never buried there at all, or they ought to have been found.

2551. Would the interment of two or more bodies in the same grave at the same time, hasten or retard decomposition (without coffins)?—Most decidedly retard it.

2552. Was the skull attached to the body of the longest or tallest man smashed, or in any way considerably injured at the time you first saw the bones in the engine-room?—I believe the skull and all the bones of the skeleton alluded to, with two exceptions, were perfectly uninjured; the two bones of that skeleton which had anything peculiar about them, were an atlas or first vertebra of the neck, which was either congenitally imperfect or had suffered from disease, and one pelvic bone was peculiar in having an apparent fracture resembling a suture through the ramus of the pubis.

2553. Can you tell the effect of lime on a dead body in a grave; does it at first hasten or retard decomposition, or make any difference in that respect?—I believe, that as long as the lime is quicklime, it will corrode and decompose organic substances with which it is in contact, but so soon as it becomes a carbonate or a sulphuret, its decomposing effect ceases, and it then becomes inert, and neither hastens nor retards decomposition.

2554. Would a damp soil necessarily cause or hasten decomposition of bodies buried; would the bodies become adipocere, or what?—A damp soil, a very damp clayey soil would not hasten decomposition, but tends to the formation of adipocere.

2555. Have you seen the fractures on the bones of those three bodies; could some of those injuries have been caused by other means than a conical ball, or have been caused after death?—There are some wounds upon the different bones there that might have been caused by conical bullets or by other means; there are some that might have been or were caused by conical bullets; there are two skulls there, each of which bears the mark of what might have been an injury from a conical bullet; but I don't believe that any conical bullet could have inflicted the sum total of the injuries on each of the two skulls; and from the appearances of these injuries, their broken edges, I believe they were or might have been inflicted after death.

2556. In your first examination, did you see whether any of the anterior superior spinous processes were missing?—There were none missing; my reason for stating so is, that when No. 1 supernumerary bone was said to exist, some gentleman said it was an anterior superior spinous process of the ilium, and every ilium present was examined; this was done more particularly by two gentlemen who examined the bones.

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2557. Are you acquainted with Orfila's works; does he maintain any opinion that in six months a body buried in a coffin would be completely decomposed?—I am acquainted with Orfila's work, entitled "Juridical Exhumations," relating to this subject, and I recollect the remark he makes, that the earliest periods he was acquainted with a body becoming skeletonised was in 18, 15, and once in 14 months.

2558. Have you seen skin distinctly recognisable as such after burial for months?—I have.

2559. Did you observe anything like the remains of skin about the three bodies in the engine-room?—Not the slightest appearance of anything like skin.

2560. Would you have expected if all those bodies had been buried together for the same time, to find some of the long bones friable, light, and disintegrated, and others of the delicate bones sound, and with sharp clean edges at their points?—Most certainly not.

2561. Do you recollect sawing a thigh bone of one of these bones; what result was there, and what inference do you draw therefrom, in respect of the period of interment?—It was sawn; I did not saw it; the result was, that the medullary canal presented the appearance of a bone which had been a long time buried; there was no smell beyond that caused by the act of sawing the bone; a fresh bone would have given rise to a very offensive odour; the internal structure was dry and contained nothing like fresh marrow.

2562. Do you believe that in a body buried for three, four, or six months, either in a coffin or without one, thorough decomposition of the solid parts, would have occurred?—I do not believe it; it is thoroughly opposed to all my experience; and to all my reading in any climate.

2563. You spoke in reference to Orfila's work as to bodies in a coffin; does he at all maintain that in or out of a coffin thorough decomposition might take place in three, four, or six months?—No, he does not; but he certainly makes the general remark that bodies uncoffined, would decompose more rapidly than those in coffins.

2564. Will you state as fully as you can, your reasons for believing that the bones produced must have been in the ground for a longer period than 11 months and four days?—I think I have stated that from the condition of the bones generally, the lightness, friability, and positive disintegration of many of them, the almost total disappearance of cartilage; the only portions of cartilage I saw, were a few particles between the joints of the vertebræ, and the total absence of all tendons and ligaments; they must have been buried for a longer period than 12 months.

2565. In reference to the splintered character of the injuries on the skulls or other bones, would such appearances lead you readily to believe that they were effected by an Enfield rifle, if you had seen them anywhere?—From my experience and reading, and from seeing a great many specimens in museums, I do not believe that a conical bullet fired from a rifle at 11 paces would splinter any

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skull as No. 3 was splintered, nor would any bullet splinter a bone as the pelvic bone of No. 1 skeleton was splintered.

2566. *By Prosecutor.*] Do you happen to know the climate in which the experiments or observations of Orfila of which you have spoken were made?—Yes; chiefly in France, and particularly about Paris; but his observations extend over the whole world.

2567. Does Orfila state whether or not those bodies were enveloped in linen, put in coffins, and buried deep in the earth?—In the remarks I made he does state the bodies were in coffins, and that implies a certain amount of clothing, and the usual method of sepulture.

2568. Do you know if there are any medical men, who have not been examined before this Court, who have seen and examined the bones now in the engine-room, who differ from you in opinion respecting them: you are not asked to tell their opinions nor their names?—I know several medical gentlemen who have examined the bones, and I believe some of them differ from me.

[The Witness withdraws.

The Prisoner states that he does not intend to call on further evidence, and asks till Wednesday next to prepare his closing address.

The Prosecutor notifies his intention of recalling Mr. Alfred Brooks.

It being now 4 p. m., the Court adjourns till 10 a. m. to-morrow, the 26th instant.

Twenty-Ninth Day, 26th January 1867.

On Saturday, the 26th of January 1867, at 10 a. m., the Court re-assembles, pursuant to adjournment: Present the same Members as yesterday.

Twentieth Witness for Prosecution re-called.

Alfred Brooks, being recalled, is questioned on his former oath by the Prosecutor.

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2569. *By Prosecutor.*] Look at the book now produced and shown to you, and to the entries in it in pencil, and say if it is in your handwriting?—The entry on the front part of the page, and on the reverse of the page, down as far as the printed words "3 Wednesday," are in my handwriting, but the lower part below that, written paler, including the signature, is not mine. There should also be another leaf immediately following that written page, with some writing on it relative to some private affairs of my own.

2570. Can you tell why you did not make any entry in that book about the three men whose dead bodies you saw on the morning of the 22nd of October?—The reason of my not making any entry was that I had placed the book under the mattrass, and could not find it next morning. I had forgotten where I had placed it.

2571. Have you ever seen the book since the time you placed it under the mattrass until you see it now?—I have never seen it until now.

The Prosecutor now applies for permission to continue the examination of this Witness, for the following reasons:

I respectfully submit to the Court my right to re-examine this Witness in rebutter to the evidence adduced on the part of the defence, to show that he was sick and unable to leave Golden Grove Estate on the 22nd of October 1865. This formed no part of the case for the prosecution, nor could such a line of defence or impeachment of the Witness have been anticipated, because not a question was asked of him in cross-examination as to his state of health at the time.

The prisoner objects to this application as follows: The Court decided, as I think will appear by its records, that Mr. Brooks was to be examined in rebutter only on the new evidence in respect of the book. The matter mentioned in this application also is one which does not strictly come in rebutter at all on any main point; the point is where he was on that Sunday; there is his evidence already.

The Deputy Judge Advocate reads that portion of the proceedings referred to in the Prisoner's reply.

The Prosecutor declines making any rejoinder, and the Court is cleared for deliberation. On being re-opened, it is announced that the Court considers that the reason put forward by the Prosecutor entitles him to continue the examination of the Witness, as requested.

2572. *By Prosecutor.*] Were you sick on Saturday, the 21st, and on Sunday, the 22nd, of October 1865, at Golden Grove, and did a person named Alvarenga attend you on either of those days?—I was never sick on either of those two days. Alvarenga never attended me. I would not have a man like him to attend me.

2573. Do you know a woman named Frances Thompson; did she attend you at Golden Grove on the 21st or 22nd of October 1865?—I do not know her.

The Prisoner declines cross-examining the Witness, and he accordingly withdraws.

The book respecting which this Witness has been questioned is marked (L.), signed by the President, and appended to the proceedings.

In compliance with the Prisoner's request, preferred yesterday, for time to prepare his address, the Court adjourns till 1 p. m. on Wednesday next, 30th instant.

Thirtieth Day, 30th January 1867.

On Wednesday, the 30th January 1867, at 1 p. m., the Court re-assembles, pursuant to adjournment: Present the whole of the Members.

The Prisoner hands in a written address, which he requests may be read by the Deputy Judge Advocate, as he finds himself unequal to the task.

This having been done, the address is marked M., signed by the President, and attached to the proceedings.

The Court is then cleared for deliberation, and on being re-opened, the prisoner is requested to explain, for the information of the Court, the following words in his address, viz., "if allowed," as used with reference to Cecilia Robinson's evidence. The passage in question is read out, and the prisoner begs that he may be permitted to erase the words in question. This was accordingly done, with the Court's sanction.

The Prosecutor then requests that the Court will kindly grant him an adjournment till 12 noon on Friday next, in order to prepare his reply.

This application is granted, and the Court adjourns till the hour named on Friday next, 1st February 1867.

Thirty-First Day, 1st February 1867.

On Friday, the 1st February 1867, at 12 noon, the Court re assembles, pursuant to adjournment: Present the whole of the Members.

The Prosecutor reads his reply, which is marked N., signed by the President, and attached to the proceedings.

The Deputy Judge Advocate then begs for an adjournment till 11 a.m. to-morrow, in order to prepare his "summing up."

The Court grants this request, and accordingly adjourns till 11 a. m. to-morrow, the 2nd instant.

Thirty-Second Day, 2d February 1867.

On Friday, the 2nd February 1867, at 11 a.m. the Court re-assembles pursuant to adjournment: Present the same Members as yesterday.

SUMMING UP.

The Deputy Judge Advocate then sums up in the following terms:—

Mr. President and Gentlemen,

Staff Assistant Surgeon Morris stands arraigned before this Court on two charges, framed upon the 79th Article of War, for "Scandalous conduct unbecoming the character of an officer and a gentleman." Summing up.

The act laid in the first charge is having, on the 18th October 1865, shot to death a man called William Gray.

The act laid in the second charge is having on the 21st October 1865, caused three men, severally named Richard Walton, Tommy Miles and John M'Call, to be shot to death.

Both acts are charged to have been done during the continuance of martial law in a district of Jamaica, over which martial law then prevailed, cruelly, wantonly, and wrongfully, and not in good faith, for the purpose of suppressing the insurrection, or for the preservation of the public peace in the island.

To save the time of the Court, the existence of martial law at the times and places mentioned in the charges, and the subsequent passing of an Act of Indemnity, now the law of the island, were agreed to be taken as proved. Page 4.

I will not detain you with any remarks on the nature of martial law, and the immunity to which an officer, engaged in the course of his duty in executing it, is entitled. But there is one peculiarity in this case; Assistant Surgeon Morris is a non-combatant officer, and the acts charged against him, if committed, lie beyond the sphere of his duty in the service. Taking, however, the proclamation of martial law and the Act of Indemnity together, the prisoner, irrespective of his position in the service, is indemnified for these acts, if done in good faith, and under a belief reasonably entertained that they were proper for the suppression of the insurrection, and for the preservation of the public peace in the island, and is not indemnified if they do not fall within this definition.

There is, however, a question in regard to his legal responsibility, arising out of his position as a non-combatant officer, to which I would call your attention.

On the occasions on which the acts charged were alleged to have been committed, Assistant Surgeon Morris was in medical charge of a detachment under the command of Ensign Cullen. Now a commanding officer is undoubtedly responsible for acts done by those under

his command, to his knowledge, and within his power to restrain. But whatever responsibility is attached to the officer in command, for allowing those under him to commit, or for not restraining them from committing, an act grossly illegal, his responsibility does not exonerate them. Such allowing or not restraining is not equivalent to an order, and even an order is not always a justification. For though our courts look upon an order from a superior to be of the nature of compulsion, and admit the justification arising from this compulsion, beyond what would be done in other courts; they do not extend the justification even of an actual order to acts obviously and grossly illegal.

At the outset it is my duty to remark, that the prisoner appears by the tenor of his address, to have forgotten the terms of your oath, taken in his presence, to try and determine according to the evidence in the matter now before you; since he has sought to introduce what is not now in evidence, particularly evidence given on Ensign Cullen's trial, and evidence which he says was given by himself and others before the Royal Commissioners. This latter evidence some of you probably never have read, and if any of you happen to have read it, you will certainly most conscientiously endeavour to forget it As members of the court martial on Ensign Cullen, you have acquired experience and knowledge of the characters of classes and of individuals, and by your visit to the Iron Bridge, topographical knowledge, which has become a part of yourselves as much as any other knowledge you may have acquired by education, military service, or acquaintance with mankind. Of this it would neither be right nor possible to divest yourselves, and to this the prisoner may justly appeal. Allowance must be made, too, for some allusions to evidence, really belonging to Ensign Cullen's case, having found their way into the present case, unconsciously and by a pardonable forgetfulness, owing to the length of time over which these investigations have extended, this present trial having begun on the 11th December last, since which date 86 witnesses have been examined; and to the difficulty of making a complete mental separation between the two trials. Still all specific facts and statements not incorporated in the evidence of this case, are excluded from your consideration by the terms of your oath.

The evidence in regard to the first charge, is this—

Captain Hole, then in command at Muirton, detached a party of the 1st West India Regiment, under Ensing Cullen, and with Assistant Surgeon Morris in medical charge, on the 28th October 1865, with orders to proceed to a place called "Friendship," where, it was reported, a body of rebels were entrenching themselves. The party went instead, by mistake, to Scott's Run, Hayning, and Jericho.

Q. 1836.

At a distance of about 2¾ miles along the main road from Muirton towards Quaa Hill, there is a stream, and immediately on the other side of it a mountain road turns off to the right. Hayning is three miles up this mountain road; Jericho about a mile further; Scott's Run lies off this road to the left, before reaching Hayning.

Q. 2034, 2035, 2036, 2037.

At the ford, about half-a-mile from Muirton, an old road, now disused as a main road, but practicable for persons on foot and on horseback, turns up the hill to the right, and passing through Grange Hill, falls into the main road near Williamsfield. It is a short cut, saving a quarter of a mile. This information is given by a resident in the neighbourhood, Mr. Scoltock.

Q. 2044. 2047.

It is alleged by the prosecution that Ensign Cullen's party took this old road through Grange Hill. It is alleged on the part of the defence that they did not leave the main road before reaching the turn-off to Hayning.

This old road or track passes near Grange Hill House, now in ruins, described by some of the witnesses as the "Big House," or the "Busha House." A little further on, and to the left of the road, are two bread-fruit trees, the upper branches of which touch, and between their trunks there is another path diverging from the road. Under one of these bread-fruit trees, Assistant Surgeon Morris is alleged to have shot William Gray. All the witnesses for the prosecution who speak to his death, agree as to the locality.

Before entering upon the alleged circumstances of William Gray's death, it will be convenient to examine the chief evidence which fixes it on the 18th October 1865.

Deacon, now serving on board Her Majesty's Gunboat "Nettle," as engineer's servant, who remembers that it was in October 1865, but not the actual date, places it on the day the soldiers went to Hayning. Burke, a sailor, belonging to Scott's Run, says that it was on the 18th October; and describes that, meeting the soldiers on Grange Hill, on his way to Muirton to get a protection, he returned with them to Scott's Run, and remained there when they went to Hayning.

Q. 229.

Q. 135. 137. 177. 181.

Thus these two witnesses fix the day by mentioning another event which took place on that day.

I may here remark, as applicable to both the charges, that it would be dangerous to place too much reliance on the recollection of uneducated witnesses as to dates. But you will remember that the act of memory involved in recollecting a date, as a date, is a perfectly different act of memory from that involved in associating two events as having happened on the same day; more especially when one of them is impressed on the mind of the witness by his own participation in it. The latter act is as much within the power of an uneducated witness as in that of one belonging to a higher class.

Some evidence, besides, has been brought forward to fix this date by the aid of a written permission, bearing date October 18, 1865, given and signed by Captain Hole, and identified by him as in his handwriting.

Stephen Grant, who still is, and was then, a constable living at Grange Hill, states that he saw Gray "hearty" in the morning; that afterwards an alarm was all about that he was shot

Q. 304.

shot by the soldiers; that he saw him lying dead under one of the bread-fruit trees described above, and that in consequence he applied to Captain Hole for liberty to bury him, and received from him about 4 p.m. the permission referred to. It has been produced, and is in the following terms: "The bearer, Stephen Johnson, has permission to bury a dead body at Grange Hill." There can be no doubt, therefore, that there was a dead body, then lying unburied at Grange Hill. Was it that of Gray? Stephen Grant says it was. He says, also, that after receiving the permission, he had the body removed to the old Busha House, and gave it in charge to Gray's own family. The next morning, as he was going about as constable, and had no time himself, he gave the permission to Cane, that he might see the body buried; and the permission remained in Cane's possession up to this trial. Cane has been called. He speaks of the body as that of Gray, and states that he helped to bury it; that he received the "permission" from Grant, and retained it till he gave it over to the prosecution. Some doubt is sought to be thrown on Grant's statement that the permission was given to him, from the fact that it bears the name of Stephen Johnson instead of Stephen Grant. Captain Hole has no recollection of this particular paper, as he had to sign his name sometimes as often as 200 times a day, to certificates and passes of different kinds. He thinks, however, that it was given to the person whose name is on the paper, and that a constable who could read or write would not have ventured, at that time, to use a paper that did not bear his name; that he would have been afraid to do so, and would have called his attention to it. This is, of course, only offered by Captain Hole as his opinion of what was likely. On the other hand, there is certainly nothing improbable in a mistake occurring in a name under the circumstances, and in the mistake escaping the notice both of the writer and of the person receiving the paper. You will also have observed that this "permission" is not a personal protection, but an authority to do an act requiring to be done at once, while it was immaterial who did it. Neither the evidence of Grant, nor that of Cane, supposing they were aware of the mistake, shows any traces of the fears attributed to them by Captain Hole; for Grant represents himself as handing over the permission to Cane, and Cane as assisting the family of Gray to bury him, with the "permission" in his possession, though it was not made out in his name, or in that of any of Gray's family.

Q. 265. Q. 268. 282. Q. 305. Q. 275. Q. 317. 314. Q. 314. Q. 450.

The matter therefore stands thus: There is a dead body to be buried; it is within the duty of Grant, as a constable, to see that it is buried, and that at once; there is an authority for some one to bury it, signed by Captain Hole, all that is undoubted. You will consider, therefore, whether their conduct in treating, as they appear to have done, this paper as a permission for the family to bury, the important point being that it bore the signature of Captain Hole, is or is not probable.

This paper appears to preclude all possibility of there having been any unintentional mistake, on Grant's part, as to the date of Gray's death, and the question therefore becomes: Is he, or is he not, speaking the truth in placing it on that day, and in saying that he sought the "permission" in consequence of the alarm that Gray had been shot by the soldiers?

You will next have to consider the evidence brought forward to connect the prisoner with the death of Gray.

Two of the witnesses for the prosecution, who speak to the shooting, Deacon and Steel, accompanied the soldiers throughout the day. The others, Hamilton, Burke, Elizabeth Curate, John Curate, and Ellen Gray, were casually at the spot; Hamilton with Gray, Burke, as you have already heard, on his way to Muirton, and the last three on their way to their provision grounds, early in the morning.

According to the evidence for the prosecution, opposite the Grange Hill Busha House, a path turns off to the right, in coming from Muirton to Deeling. The soldiers went up this path to Deeling, and then returned to Grange Hill. On their return, following Deacon's account, Assistant Surgeon Morris saw three men sitting on the step at the Busha House, and went there with a few soldiers, and ordered them down to the bread-fruit tree. He then asked Deacon if he knew them, and Deacon answered that he knew Hamilton and Grey. Upon this, Corporal Hunter said, he had that name upon his list. Steel and Hamilton agree in there having been a conversation in which Gray's name was given. Steel makes him give it himself; they agree also in his name having been said to be upon a list. Hamilton representing Deacon, the other the corporal, as mentioning the list.

Q. 249. 257. Q. 232. Q. 54. Q. 30.

As regards the actual shooting, Ellen Gray describes the soldiers as opposite Billy Gray, standing up behind the white man; she herself was on one side of Billy Gray, with soldiers all round, but not so as to prevent her seeing her brother. John Curate describes himself as near Gray, with soldiers in front of him; but a horse just before him got away, and that made an opening through which he was enabled to see. William Burke also was in the midst of the soldiers. John Hamilton was standing behind Assistant Surgeon Morris, with soldiers about him, and he places Gray about five paces from the prisoner.

Q. 211. Q. 210. 214. 216. Q. 44.

All these witnesses agree that "the white man" (as he is described by Elizabeth Curate and Ellen Gray, who did not know him; Dr. Morris, as he is called by Hamilton, who knew him then, but does not recognise him now; and as he is identified here by John Curate, Steel, Burke, and Deacon, who had different means of knowing him) pointed his revolver at Gray, and that it snapped several times; most of them gave the number of times it snapped, and they differ as to the number, but I will not trouble you on this point; it would be difficult for any of us to remember such a number after the lapse of a year, however certain we might be as to the fact; and the evidence you have heard will probably lead you to judge that the notions of persons in the class of life to which these witnesses belong, are very vague as to numbers. Of this, indeed, Hamilton affords an instance; for

in his evidence, given before you, he puts the number of times the revolver snapped, first at five and then at four. But you will probably consider the point immaterial, except that this discrepancy appears inconsistent with the idea of concert among the witnesses.

All these witnesses, with the exception of Hamilton, also state that when the revolver snapped, Dr. Morris ordered a soldier to shoot Billy Gray, and that the soldier shot him with a rifle.

Steel, John Curate, and Ellen Gray, say Gray was shot in the chest. Steel adds that the soldiers shot him in several places after he was dead on the ground, and that the doctor split his head open with his sword. Hamilton's account is that the pistol would not go off, and that Dr. Morris screwed it from the lock, and then put it back, and called to one of the soldiers, "Must bring a rifle here;" that he then told the soldier he must stop a little, and cocked the pistol, the pistol went off, and Gray fell. He thus coincides with the others as to something being said or passing between Assistant Surgeon Morris and the soldier after the snapping of the pistol; while he differs from them as to the person who fired the deadly shot. This difference has been the subject of comment both by the prisoner and the prosecutor.

Q. 4.

Q. 312. As to the wounds, Grant speaks to seeing a cut on Gray's forehead as he was lying under the bread-fruit tree; and Cane, who laid him out, saw a wound through his chest, coming out of his back, and a cut right down his forehead and eyebrow. The statement of Steel, therefore, that the soldiers shot him in several places on the ground, is not in accordance with Cane's evidence, though it would seem that a second wound was inflicted.

This is the evidence for the prosecution.

The prisoner denies the act; and in support of his denial, has called witnesses to show that he was not at Grange Hill that day; that neither he nor any of the detachment carried revolver, and that no one was shot on that march.

His most important witnesses are Ensign Cullen, Wolstenholme, then Company Sergeant Major, Sergeant O'Connor, Corporal Hunter, and Private Blythe, who were with the detachment that day. They all state that they saw no one shot that day. Wolstenholme adds that he was close to Dr. Morris all that day. Ensign Cullen says that he did not lose sight of Dr. Morris that day; that Dr. Morris could not have given an order to shoot anyone without his knowledge, and that he certainly would have reported such an act, had it taken place, to Captain Hole. Captain Hole has stated that no such report was made to him.

Q. 1860.

Q. 1857.

As regards their route this day, Ensign Cullen says they marched from Muirton by the main road till they came to the turning up to Hayning, and that, to the best of his knowledge and belief, he was never at Grange Hill till he went there on the 31st December last, to assure himself of the road taken on the 18th October 1865. Corporal Hunter says that he knew the property before, but never was at Grange Hill itself till he went there with Ensign Cullen on the 31st December last. Serjeant O'Connor says that they went by the main road from Muirton to Hayning; they did nothing but march there and back. On being further questioned, he said he is a stranger to the locality, and does not know the names of places there; he does not know Grange Hill, Scott's Run, nor Jericho. You will remember that they did go to Scott's Run, Hayning, and Jericho, and that, to reach those places, they left the main road and took a mountain road. Wolstenholme says they did not leave the main road till they turned up to Hayning; he knows, he says, very little about the roads or the places; he never heard the name of Grange Hill; he, too, does not know Scott's Run, and does not remember if they went to any other places but Hayning and Jericho. Blythe remembers going to a place called "Hayton," or something like that, but cannot describe the road they took; and, to his remembrance, never heard the name of Grange Hill. You will probably think that the recollections of O'Connor, Wolstenholme, and Blythe are too indistinct to afford you any trustworthy information as to their route, and that the denial that the detachment went by Grange Hill, so far as these witnesses are concerned, rests upon the evidence of Ensign Cullen and Corporal Hunter. In estimating the value to be set upon Ensign Cullen's recollection, you will doubtless observe that his memory as to another part of the exact route taken is not very clear. He went to Scott's Run as well as to Hayning, and to do so must, as you know from the evidence of Mr. Scollock, have turned out of the Hayning road; but he does not remember whether he went there on going to, or on returning from, Hayning. You will also without doubt have remarked that on his late visit, to assure himself of the localities, he went only about 400 paces up the Williamsfield end of the road towards Grange Hill, as far as the bread-fruit trees, and that neither he nor Hunter took the route which he is alleged to have taken on that march, namely, up from the Muirton end, and over Grange Hill down to Williamsfield, certainly an incomplete way of refreshing their memories on that point.

Q. 1856. 1838.

Q. 1759, 1760.

Q. 1789. 1749.

Q. 2202, 2203.

Q. 2208.

Q. 2204. 2211.

Q. 2266. 2284. 2288.

Q. 2292.

Q. 2290.

Q. 2452.

Q. 1887.

In addition to these witnesses, the prisoner has called four men of the 2nd Battalion 6th Regiment to prove that he did not go to Grange Hill. Colour Sergeant Webster, Privates Allen, Gardener and Doolan say that a party of six men, under Webster, went out on the 18th October to Grange Hill; that they were out riding about five or six hours; and Grange Hill is the only place they mention as having visited. Doolan says he cannot remember the name of any place, it was so long ago. Webster did not then know the name of Grange Hill, but remembers two bread-fruit trees in particular, to which he went, near the road. He saw no dead body there; he neither saw nor spoke to anyone at the place. Allen says, he went out with Webster to Grange Hill, and did not hear of anyone being shot there. Gardener and Doolan also state that they neither saw nor heard of any dead bodies there; that they saw some women and children, and that Webster and some of the others asked if black troops had been there, and we answered "No"; that they asked this in obedience

Q. 2219. 2479.

Q. 2482. 2487.

Q. 2254.

Q. 2259.

dience to orders from Captain Hole, in consquence of the habit of the black troops to break away. Doolan explains further, as a reason for their inquiries, that one of the black soldiers broke away from Muirton, shot a hog, and was absent for four or five days, and that after that they always used to ask about them. Now, Captain Hole arrived at Muirton on the 16th October, and this alleged visit to Grange Hill and these inquiries took place on the 18th. These dates may assist you in deciding what credit the evidence of this witness deserves. In his remarks on this part of the case, the prosecutor has suggested, in explanation of their not having seen the body, that it may have been removed into the Busha house. This suggestion, however, is not borne out by the evidence for the prosecution, according to which the body of Gray lay under the bread-fruit tree from the time at which he was shot till after 4 p.m. Q. 2260. Q. 2225.

In the next place, the prisoner brings evidence to show that neither he nor anyone else of the detachment carried a revolver on the 18th October.

Captain Hole says he remembers that Assistant Surgeon Morris's revolver had been rendered useless by the loss of the pin, and lay in two pieces on the window at Muirton; that he cannot state from what date to what date it lay there, but is certain that it was there the day Assistant-Surgeon Morris was out, the 18th. As Captain Hole has shown by his evidence generally that he is a very careful witness, you will have to consider whether, in fairness to him, his words ought or ought not to be interpreted as meaning that the revolver was in the window during that part of the day on which Assistant Surgeon Morris was out, the interpretation put upon them by the prisoner. Some further evidence was given to show that the pin of the revolver was lost on the 16th October, but I need not trouble you with it. You will, probably, believe that the revolver was out of order at this time. This point seems common to the two accounts, as the witnesses for the prosecution represent it as snapping several times. The question is, did he take it, though out of order, or any other revolver with him? Ensign Cullen says that Assistant Surgeon Morris had no revolver with him. None of the soldiers of the detachment were asked any questions on the point, except Blythe, who does not remember now how Dr. Morris was armed. The evidence on which the prisoner relies, is that of some men of the 6th Regiment, Serjeant Webster, Corporal Handley, Privates Edge, Roch, Allen, and Doolan, who say they observed Assistant Surgeon Morris before he set out, and that he had no revolver. Doolan says, further, that after Assistant Surgeon Morris left Muirton on the 18th, he attempted to clean the revolver; and Gardner says he saw it in Doolan's hand. Roch says, besides, that he never saw Ensign Cullen with a revolver, and Allen, that Dr. Morris was the only one of the detachment who had a revolver. Q. 1614. Q. 1858. Q. 2473. 2172. 2163, 2164. 2377. 2401. 2216. Q. 2217. Q. 2254. 2376. Q. 2401.

I have thus gone through the evidence on both sides, and you have heard the remarks made on it both by the prosecutor and the prisoner. It is for you to decide whether the case against the prisoner is made out, or whether the evidence he has brought forward disproves it, or throws such doubt upon it as to entitle him to an acquittal.

In case your finding should be adverse to the prisoner, I would call your attention to the wording of the charge. The prisoner is charged with having shot to death William Gray. On the supposition of such an adverse finding, you must conclude—as, indeed, has been admitted by the prosecutor—that Hamilton is wrong in saying that Assistant Surgeon Morris shot him with his own hand, and that the other witnesses are right who say that a soldier shot him in the presence of Assistant Surgeon Morris, and in obedience to his orders. In the latter case, however, Assistant Surgeon Morris would be as guilty of having shot him as if he had done it with his own hand. Where one gives a mortal stroke to a man, and another is present, aiding and abetting, the stroke is, in law, the stroke of each of the two, as much as if both had held the weapon and had struck together. The difference of their respective shares in the act is one merely of circumstances, and is described by designating the one who gave the stroke as the principal in the first degree, and the other as a principal in the second degree. Now, should you think that the words "shot to death," especially when compared with the words "caused to be shot to death," used in the second charge, and as explained by the evidence offered in support of that charge, convey the meaning that Assistant Surgeon Morris is a principal in the first degree; and should you wish to indicate your conclusion to be that he is a principal in the second degree, it is competent for you—under the rule of military law that if the evidence does not support the more grave part of a charge, a court martial may convict an offender in any degree in which he may be found guilty—to indicate that conclusion by finding a special verdict to the effect that the prisoner is guilty of having caused William Gray to be shot to death.

The evidence for the prosecution on the second charge naturally divides itself into two parts—

First, the evidence adduced to prove that the prisoner caused the three men named in the charge to be shot to death on the 21st October 1865.

Secondly, the evidence that the men were seen dead at the place of the alleged shooting the next day, Sunday, the 22nd.

The evidence for the defence may be similarly divided in two parts, each in answer to one of these.

There are some facts in the case established beyond doubt.

On the 21st October 1865, Ensign Cullen, in command of a detachment of the 1st West India Regiment, marched from Manchioneal, and arrived at the Plantain Garden River Post-office, which is kept by Mr. Manning, and is both a post-office and a shop, or

the Iron Bridge, as the spot is generally called, a little before 9 a.m. His orders were to report himself to the officer he would meet at the post-office. He halted there till about 2.30 or 3 p.m., at which time he marched on to Golden Grove, in compliance with subsequent orders sent to him from Lieutenant Adcock.

The soldiers with him, with the exception of Private Leslie, made the halt shorter; but whatever may be the cause of their mistake, they are shown by the evidence of Ensign Cullen, and that of several other witnesses for this prosecution and the defence, to be in error. Assistant Surgeon Morris accompanied the detachment in medical charge, and on arriving at the post-office, complained of illness, and lay down in a small room adjoining the shop. He, as well as most of the others, arrived on horseback, and he left with the others on horseback. During this halt the act charged is alleged to have been done by him. Before, however, examining this point, it will be convenient to pass on to the second part of the evidence—that of the men having been seen dead on 22nd October, and to leave to the last that which directly affects the prisoner. But before coming to the question of this actual date, you have the evidence of Robert Moyle Wilson, one of the
Q. 1694, 1695. witnesses for the defence, who was a book-keeper on Duckenfield Estate in 1865, that he
Q. 1699. heard of the shooting of the men at the Iron Bridge two or three months after it was said to have occurred; it might have been in January or February 1866, from Bryan, another
Q. 1700. book-keeper on the same estate. This evidence deserves attention, because the information was sought and given independently of and previously to the subject becoming a matter of general conversation.

Q. 1913. 1625. It became matter of conversation about the end of March last. On the 1st of April, Mr. Sinclair states, he and Mr. Chisholm were shown the grave by Peter Phillips, at which
Q. 1640. time no signs were apparent to him of a recent grave. The exhumation conducted by Assistant Surgeon Kerr in September last, proves that the spot was a grave, and Peter Phillips knew the fact on April 1st. It is insinuated that it is a made-up grave. The grave cannot have been made up since April, as the place has been under observation. Nor can it be supposed to have been made up with a view to the inquiry by the Royal Commission, consistently with Mr. Sinclair's evidence, since he, looking at it with the care implied in his taking, as a magistrate, the witness Phillips he was examining to identify the exact spot, saw no signs of a recent grave. No other time has been suggested, at which a grave containing skeletons bearing marks resembling bullet wounds, can reasonably be supposed to have been made up. And if it is not a made-up grave, you would justly require evidence and explanation far more distinct and definite than that brought before you on the part of the defence, to lead you in the face of the testimony adduced by the prosecution, to assign it to any other time but that alleged.

Q. 1047. 1077. 1102 1275. The next evidence is that of the witnesses, who say they dug the grave; these are Wedderburn, Harriett Warren, Taylor, and Bayley, labourers from Amity Hall, and Bartley, an African, residing at Dalvey. They all state they saw the three men dead, and tied to the bamboo rail of Duckenfield grass-piece, and helped to bury them in a grave in the grass-piece on a Sunday in October 1865; according to two of them, the 22nd, at some time, as appears by comparing their statements, between 10 a.m. and 1 p.m.; they also say that it was the same grave out of which they took three skeletons at the exhumation conducted by Assistant Surgeon Kerr. There is no doubt that they exhumed three skeletons from a spot in this grass-piece on the 26th of last September; that they recognised that spot as the place
Q. 1204. where they were to dig, and that they had no difficulty in finding this spot. Some of them, therefore, must have had some previous knowledge that three skeletons would be found there; they account for that knowledge by saying that they buried these three men there.

The prisoner endeavours to throw discredit on these witnesses, by proving that they were not seen by witnesses whom he has called belonging to a mounted party from Golden Grove, under Lieutenant Adcock, which passed over the Iron Bridge and through Amity Hall that Sunday morning. You will have observed, however, that according to the evidence for the defence, this party had passed the bridge apparently two hours or even more before the burial is alleged to have taken place; that it was the habit of the negroes
Q. 2119. to get out of the way of any body of troops, and on that Sunday morning few were seen,
Q. 2118. except women, children, old men, and people with sore legs; persons that is, who from sex, age, or infirmity, could not easily get out of the way.

It is at this part of the case that the medical evidence comes in, brought forward by the prisoner, to prove that the story of these witnesses is impossible, as contradicted by the observations of medical science, and by the prosecution, in anticipation of this line of defence, to show that the story is consistent with those observations; the most important point in regard to which, it is adduced, is the state of decomposition in which these skeletons were found. Now, if the accounts of the persons who say they buried these bodies, were in flagrant opposition to the facts well established by medical science, you would, without doubt reject it; but this is not the case. The subject of decomposition, is one on which Dr. Anderson tells you the opinions of medical men differ widely. The three witnesses for the defence, Dr. Bowerbank, Dr. Anderson, and Dr. Manners, give it as their opinion, that these skeletons must have been in the ground more than the alleged time. The three witnesses for the prosecution, Assistant Surgeon Kerr, Dr. Fiddes, who appears to speak after considerable experience, independent of this case, and Dr. Scott, state it as their opinion, that regard being had to all the circumstances of the case, the skeletons are in a state of decomposition to be expected after the alleged period of interment.

The other proofs offered of the impossibility of the story on medical grounds are, first, the absence of about 150 bones of the hands and feet; and secondly, the presence of two small fragments of bone not identified as belonging to any one of the skeletons. The pri-

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soner has not made his object very clear, but he appears to intend by the first of these proofs, to raise a presumption that the bodies have been longer in the earth than a year; these missing bones being assumed to have decayed. On this point, Dr. Anderson says, that some of the smaller ones may have decayed within a year. It is in evidence, that corresponding bones are present, and Dr. Scott tells you, that it not unfrequently happens in exhumation that these small bones become mixed with the earth, and thus escape observation. By the second proof, and perhaps by both, the prisoner appears to intend to raise a presumption, that the grave from which the skeletons were taken, was made up for the purpose.

With regard to the two small bones marked 2 and 3, Dr. Anderson thinks they are probably in excess. Dr. Bowerbank and Dr. Manners express a decided opinion that they are so; the latter alone, indeed, says there are three bones in excess. Dr. Fiddes says they do not form any portion of the three skeletons. Dr. Scott, that he cannot satisfy his mind that they belong to the skeletons; and Assistant Surgeon Kerr offers no opinion regarding them. Q. 2518. Q. 2492. Q. 1244. Q. 1314.

You can form your own conclusions from these opinions as to the presumption to be raised from the presence of these bones. In forming this conclusion, you will remember that this portion of the evidence consists of speculative opinions on points of admitted obscurity, which cannot, by the nature of things, be placed on the same footing as proved facts.

Returning now to the evidence in regard to the burial, there is a discrepancy among the witnesses as to the exact position in which they placed the bodies in the grave. Wedderburn representing the head of the middle one as below the heads of the other two, and Bartley as above.

There is a point which will probably suggest itself to you, whether it is possible that the persons who dug the grave, may have, either by mistake or design, misplaced the day, and assigned a burial which really took place some other day to this Sunday.

Wedderburn, Taylor, and Bartley, say it was a Sunday in October 1865. The latter gives as his reason for recollecting it was a Sunday, that he saw people coming from Golden Grove church, and that Cyphus Wills told him he had been to church; a palpable error, as has been already pointed out to you by the prisoner. Harriett Warren and Bayley say, Sunday October 22nd. You will feel, however, that it would be unsafe to place much reliance on their recollection of this date, considered as an abstract date; but you have this further evidence on this point. In answer to questions put by the Court, Bayley said, that on the Sunday morning before he buried the bodies, he saw volunteers at Amity Hall coming from the burning of the meeting house. Now, the burning of the meeting house is fixed by Harrison and Astwood as having taken place on Sunday morning the 22nd. Q. 1054. 1277. 1171. Q. 1125. 1127. Q. 1917. 2121.

Bryan and Cyphus Wills, of Duckenfield, speak to seeing the bodies tied to the bamboo rail that Sunday morning; and though you would hardly trust the memory of the latter as to a date, the day is one which they would naturally remember, for on it they saw Mr. Sinclair, and were told by him, as he says himself, to resume their work the next day. Q. 369. 371.

The next portion of the evidence is that of Brooks, a volunteer belonging to Ford's Irregulars, of six constables from Holland Bay or Estate, and of one of a body of prisoners under their charge, who all say they saw the dead bodies on Sunday morning the 22nd. Brooks' account is that on that Sunday he was sent by Captain Ford to arrest prisoners on Holland Estate, and that he left Golden Grove for that purpose, between 7 and 8 a.m., after the departure of Lieutenant Adcock's party. He went along the Holland Bay Road, and on his way saw three dead men tied to the bamboo rail of Duckenfield grass piece; one of whom he recognised as Walton. He procured some constables, and with their assistance he arrested about 30 prisoners, and marched them by the Iron Bridge to Golden Grove, reaching the bridge about 10 a.m. When there, he took them down the road to the rail, and showed them the bodies as a warning. He arrived at Golden Grove, and delivered, he says, the prisoners to Lieutenant Adcock and Captain Ford, about 10.15 a.m., and then went out foraging with some soldiers of the 6th Regiment. As to seeing the bodies, he is corroborated by the six constables: Speed, Hamilton, Bevis Hunter, Brown, Sproul, and Bignall; some of whom state further, that they marched the prisoners to the Great House at Golden Grove, where Brooks went in for a time, and that then on his coming out they took them by his orders to the Mill House, and gave them over to the soldiers. Richard Roden Francis, one of the prisoners at the time, gives evidence to the same effect. Q. 746. 722. Q. 724, 725. Q. 726. 728. Q. 730. Q. 776. Q. 1032. 1145. Q. 1347.

Both by his evidence, and by his address, the prisoner has most strongly impugned this account, and endeavoured to show that Brooks was ill on that Sunday, and that he did not leave Golden Grove. To prove this, he has called Mais, then a book-keeper at Golden Grove, and now an overseer at Mullet Hall, St. Andrew's; Lowe, Stuart, and John Wilson, of Golden Grove; Frank M'Dermott, of Plantain Garden River Estate; Richard Moyle Wilson, then a book-keeper of Duckenfield, now of Plantain Garden River Estate; M'Farlane, formerly overseer of Amity Hall; David Ford, then second Serjeant of Ford's Irregulars, and Myers, both coppersmiths of St. David's; Alvarenga, a druggist of Golden Grove, and Frances Thompson, a washerwoman of Stokes Hall, then employed at Golden Grove; all these, as well as some other witnesses, state that Brooks complained of being unwell on the march from Morant Bay to Golden Grove, on Saturday 21st. Q. 1426.

At Golden Grove, Ford's Irregular Volunteers, or some of them, were quartered in the Book-keepers Barracks in the square. Without entering into details as to the plan of the building, it appears that there are two ways of getting out of the room, which Brooks is said Q. 2027, 2028.

said to have occupied; one into the piazza, within the observation of the occupants of the other rooms which open into the piazza, and which at that time are said to have had their doors smashed; and another, by a trap-door down a stair through a passage under the house, the way used by the servants; but by either way, a person leaving the building
Q. 1524. 1693. would be within the notice of persons in the square. Of the witnesses just mentioned, Stuart and Moyle Wilson went out with Lieutenant Adcock, and Frank M'Dermott was sent to the Rhine Pen for supplies about 7 a.m., returning about 1 p.m. Their evidence, therefore,
Q. 1692. does not apply to the time when Brooks says he went to Holland Estate, but they all three say that he was ill, and not in a state to go, when they saw him in the morning. Lowe
Q. 1484. says he saw him first about 10.30 a.m. lying in bed with his trousers on, but he cannot
Q. 2300. 2327. tell how he was. John Wilson and M'Farlane say they were detained, for reasons they assign, in and about the barracks all day, and that Brooks remained in his room ill. So
Q. 1578. also does Ford. Mais speaks of him as ill in the barracks. Myers, however, describes
Q. 1596, 1597. him as in and about the barracks, walking about with nothing particular to do. Frances
Q. 1401. Thompson says she nursed him, and saw him at 6 and 7 a.m., and never missed him all
Q. 1401. that day, as he remained in his bed; and Alvarenga, the druggist, that he visited him at 7,
Q. 1533. 8, and 10 a.m., and he described the active treatment he considered necessary for Brooks' state of debility, brought on by exposure from living in the woods, and running about.

You have thus two distinctly contradictory statements; both of them attended with difficulties, and all I can do is to suggest some points for your consideration.

There is no doubt that prisoners were brought in to Golden Grove that day; and among them, some of those whom Brooks and the constables say they brought in, are mentioned
Q. 1514. 1516. by Stuart, who however says they were brought in by a man named Isaac Cornwall.

On the one hand, you will observe that Brooks is not a careful witness. He has made
Q. 776. two inaccurate statements. First, he states that Lieutenant Adcock's party had returned from their march before 10.15 a.m., and that at that time he delivered the prisoners to him and Captain Ford; while you have it established by evidence, which you cannot doubt, that
Q. 2569. they did not return to Golden Grove till late that afternoon. Secondly, with regard to a memorandum-book produced before you, containing a page, part of which is in his handwriting, he has stated that there should be another leaf immediately following that written page, with writing on it relative to some private affairs of his own; though, as the prisoner has noticed, by inspection of the book, you will see that it is impossible there could have been such a leaf there. On the other hand, you cannot but view with suspicion that while all the other witnesses are, very naturally, at this distance of time, wanting in exactness as to hours in regard even to events of some importance, many of those who speak to the movements of Brooks, become extremely exact. You will remember also that Brooks is corroborated by six constables, and if he is speaking falsely, it seems difficult to conceive what motive can have induced them, under the circumstances, to perjure themselves in order to support his testimony.

Brooks' credibility is impeached, also, on the ground that he made no entry about seeing these three dead bodies on the Sunday, in the memorandum-book mentioned above, which
Q. 1422. 2301. he began to keep. Mais says that, to the best of his belief; John Wilson says decidedly, that the writing on both pages of the leaf produced is that of Brooks. Brooks states the entries on the first page and those on the second page, down to the printed word "Wednesday," to be in his handwriting, and denies the rest of that page to be his. You have observed the form of the letters and the character of the handwriting of these respective entries, and will draw your own conclusions from them. Should you believe the whole to be in his handwriting, you will observe that the entries end on the 21st October. Should you believe that the last portion is not his, the entries end on the 18th. In neither case, then, can the diary be relevant to the inquiry about the 22nd October, the day he speaks of seeing the dead bodies.

The evidence which the prisoner has offered to prove that there were no dead bodies at the bamboo drawrail on that Sunday, the 22nd, is that of some of the party under Lieutenant Adcock, on the march of that day. The party reached the Iron Bridge early, certainly
Q. 1896. before 8 a.m. Those who have been questioned on the point state that when at the bridge they did not smell any dead bodies, nor see any crows hovering about, as might, they say,
Q. 1904. have been expected, especially if blood had been spilt.

But the really important evidence on this point is that of two soldiers, Bedford and Cox, of the 6th Regiment, and of Watson, a volunteer.

Q. 2147. It appears that on this march Astwood's volunteers were in front, a few of the 6th in the centre, and Ford's Irregulars in the rear of the column. Two troopers, Berry and Brandon, the latter not now in the island, were in advance, according to Berry's account, about 100 yards, and according to Astwood's, about 25, until after passing the bridge. Mr. Harrison acted as guide. When they arrived at the turn by the post-office over the Iron Bridge, Berry and Brandon took the right road and crossed the bridge. At the post-office the
Q. 1898. 2098. 2380. column appears to have made a slight halt. Bedford and Cox, during this halt, say that the
Q. 2391. former changed his saddle, which was broken; and that, before the party offered to start, they and another soldier, since dead, had a race for their own amusement 200 or 300 yards
Q. 2420. down the Holland Bay-road, as fast as the horses could go. They state that they did not see any dead bodies on the road; and Cox adds that he did see a bamboo drawrail fence. No other witness speaks to having seen this race, though it would seem that, to ride it, these three men must have left their place in the centre of the column, and have passed Astwood's troopers in front of them, at a time when, according to Harrison, there was no regular halt. On this point you have heard the suggestion of the prosecutor, that this race probably took place on the Duckenfield, not on the Holland Bay-road.

Watson

Watson was one of Astwood's Volunteers, and the right-hand man of the leading file. Lieutenant Brass says he was riding beside the second file, which was not more than a horse's length behind the leading one. According to the evidence of Harrison, Astwood, Brass, and Watson, it appears that the head of the column began to advance down the Holland Bay-road, instead of following the advanced files, Berry and Brandon, over the bridge. This certainly seems to show that the orders which are stated by Trooper Davis to have been given to keep a sharp look-out, were not strictly obeyed by those at the head of the column. Harrison states that, on his noticing the mistake that had been made, there was a shout raised to call them back. He presumes they returned in obedience to this shout, but did not stop to see, as he was hurried over the bridge by Lieutenant Adcock, and he himself went barely to the blacksmith's shop. In answer to a question from the prisoner, whether he could give some idea of the extent to which the leading files went down the wrong road, he, somewhat vaguely, says they went down further than 80 paces—the distance of the bamboo draw-rail from Manning's shop—though he did not particularly notice it. Lieutenant Brass thinks he went down from 25 to 30 yards, reckoning from opposite the Iron Bridge, when he turned on hearing some shouting; and that at that distance he saw no dead bodies on the road. Watson states that he went down about 250 yards; that he took notice of a bamboo draw-rail in a logwood hedge; that he is positive that he saw it that morning, and that he did not see any dead bodies at that rail, as he must have done had any been there. He further states that he was called back by Mr. Harrison, who came, to the best of his recollection, within a few yards of them, at that distance of 250 yards; that he returned with the others—among them Lieutenant Brass—with Mr. Harrison.

Q. 2020. Q. 2248. Q. 2157. Q. 1923. 1921. Q. 1900. Q. 2247. 2237. Q. 1992. Q. 1994. Q. 2002, 2003.

Now, it cannot have escaped your notice that there are great difficulties in Watson's account. He is inaccurate in his estimate of distance, as he considers the bamboo draw-rail to be between 100 and 200 yards down the road, from abreast of the Iron Bridge; the actual distance being, as you are aware, about 60 yards. This inaccuracy, however, would not in itself explain his having failed to see the bodies, supposing them to have been there, because he represents himself as having gone about 250 yards—that is, further than he places the bamboo draw-rail—and as having actually seen this rail. But it seems impossible to reconcile his 250 yards with the 25 or 30 of Lieutenant Brass, and in his recollection that Mr. Harrison came within a few yards of him at that distance of 250 yards down that road, he is distinctly contradicted by Harrison himself, who you will probably think may be presumed to be most likely right in describing what he did in the discharge of his duty as guide.

Should you think, notwithstanding these difficulties, that the evidence proves that there were no bodies at the bamboo-rail on Sunday morning 22nd, you will approach the other part of the case, that relating to the death of the men, with distrust. But should you think that the evidence of the witnesses from Amity Hall, who say they dug the grave; of Brooks, the volunteer; and of the constables and the prisoner from Holland Bay and Estate; and of Bryan and Wills, from Duckenfield, offers a body of testimony too clear, and derived from sources apparently too independent of each other, to allow of a reasonable doubt that the two soldiers and Watson must have fallen into some mistake, and that the bodies were there on Sunday morning, you will observe that though your time has been chiefly occupied with this branch of the case, the evidence proves only that the men were dead at the time, and as yet does not affect the prisoner; and you will now go on to the other part of the case, and consider whether the evidence laid before you in regard to Saturday the 21st proves to your satisfaction that Assistant Surgeon Morris caused the three men to be shot to death.

First, then, I will take the evidence offered by the prosecution, and then that offered by the prisoner.

According to the former, Bryan, with two constables, Wills and Colson, took the three prisoners named in the charge (a fourth, who has been produced before you as a witness, having escaped on the way to the Post-office) on Saturday, October 21st. This was about mid-day, according to Bryan and Anderson. Manning also says that Dr. Morris had been lying down fully two hours before the shooting of the prisoners. The prisoners were delivered to the soldiers, and tied to one of the posts in front of Manning's shop. Bryan told Ensign Cullen that they were charged with stealing rum, nails, and other things from the estate, and asked him to flog them. An order for flogging was given, and some of the soldiers began to make a cat. The witnesses for the prosecution agree substantially in their account of this part of the matter, and I do not think it necessary to do more than put before you a summary of the evidence, for hitherto it does not affect the prisoner.

Q. 523. 991.

Up to this time the prisoner was in Manning's little room; but at this stage, following Manning's account, Dr. Morris went out to Ensign Cullen, who was standing in the road, whispered to him, and the soldiers then said, "The men are to be shot; the doctor say so," speaking loudly. Immediately afterwards the prisoners were loosed from the post, led off by soldiers, who were called out with their rifles, and with Dr. Morris and the soldiers with their rifles marched off down the road some sixty or seventy yards, where they stopped, and were taken across the road. His words are, "I could only then see the three heads of the three prisoners." He then describes, as you will recollect, the shooting of the prisoners one by one, and adds, "I then saw Dr. Morris discharge a rifle at one of the men that were shot." Bryan states that he told Dr. Morris the charge against the prisoners. He, Colson and Wills, the constables with him; Speed, a constable from Holland Bay estate; Cecilia Robinson, Manning's cook at that time, who says she had been giving Dr. Morris tea; Donaldson, Manning's servant; Anderson, then staying at the post-office;

Q. 943. Q. 460. 462. 388. 362. 404. 560. 561. Q. 612. 617. 822.

393. 783. Hamilton, a shopkeeper at Holland estate; Duany, a lighthouse keeper at Morant Point; all speak of Dr. Morris as joining or whispering to Ensign Cullen, and represent that after that the order for shooting was given.

Q. 4 1. Q. 393. Bryan states that Dr. Morris ordered the soldiers to take their rifles—"Four of you get up your rifles." Hamilton also represents him as giving an order about the prisoners—"Loose them, and take them out one by one;" and Manning's account of the soldiers' words implies some order on the part of the prisoner. It appears from the evidence for the prosecution that Ensign Cullen did not go down to the place where the men were shot. If, therefore, you believe these witnesses at all, you will believe that the prisoner took a leading part in causing their shooting.

Q. 945. Q. 628. Q. 823, 824. Q. 892. Bryan, who was sitting on his horse at the upper door of Manning's shop; Manning and Duany, who were in the shop; Donaldson, who went some way down towards the bamboo draw-rail; Anderson, who was in the middle of the road, opposite the Post-office box; and Hamilton, who was under the shed of the shop, all say that Dr. Morris was at the shooting with the soldiers, and that he fired the last shot.

With regard to this last shot, I submit to you that it was probably fired, if fired, to put a speedy end to the sufferings of a wounded man, and that you should treat it only as evidence of the prisoner's presence.

Putting together, therefore, the different portions of evidence, the result is this:—There is evidence pointing to the conclusion that the change of orders from flogging to shooting was due to the prisoner's interference. There is distinct evidence that he gave orders in regard to the shooting; this was in the presence and hearing of Ensign Cullen; and there is evidence also that he was at the place where the men were shot without Ensign Cullen, and took part in the shooting. Should you consider this to be proved, Assistant Surgeon Morris comes within the charge of having "caused the men to be shot to death."

Q. 947, 826. Q. 1007. 827. 529. 686. There is a point not made clear by the evidence, on which the Court has sought information by its own questions—the number of the firing party and of rifles discharged. Manning thinks ten to twelve soldiers, Anderson about fourteen soldiers, went down the road with the prisoners. Neither can say how many fired at each prisoner. Bryan says four soldiers, and he and Donaldson represent one soldier as firing at each prisoner, Dr. Morris firing the fourth shot. There is, strictly speaking, no discrepancy here, for as some of the witnesses describe the soldiers as excited, it seems very probable that more went down than those who actually fired. But there are two discrepancies. Bryan differs from all the witnesses who speak on the subject, in stating that the men were tied to the rail, with their backs to the road. The witnesses also, as has been pointed out by the prisoner, differ as to the wounds inflicted. One of the three men appears from the evidence to have had a wound in the head from which the brains protruded, while Brooks, who says he observed closely and knew the man, represents this to be Walton. Harriett Warren, who was present at the burial, and also knew him, represents this to be one of the others, and Walton as

Q. 404. Q. 472. wounded in the belly. Bryan again represents that all their heads were mashed, and the brains going out of all of them.

The prisoner, in his defence, seeks to show the untrustworthiness of the witnesses, the improbability of the story, the impossibility of his having done the act with which he is charged, in consequence of his illness at the time, and that no men were shot on that march that day.

With regard to the untrustworthiness of the witnesses, the prisoner has suggested more than once that the story is one concocted by a conspiracy, of which Manning is the chief instigator. I am obliged to point out to you that there is no evidence in the case of a conspiracy, and much evidence inconsistent with the suggestion. The numerous discrepancies on particular points—such as that among the persons who dug the grave as to

Q. 471, 472. the position of the bodies in it, Bryan's statement as to the manner in which the men were tied to the rail, the different accounts of the wounds, discrepancies to which the prisoner has fairly alluded, as raising doubts with regard to the accuracy of the story—tell against his suggestion of its being concerted. If you carefully consider the genius necessary to hatch a conspiracy of such magnitude, and the subordination and intelligence required by the numerous agents for the performance of the parts respectively assigned to them, you can hardly fail, I submit to you, to reject the notion as impossible.

Upon the untrustworthiness of the individual witnesses, I must refer you to the prisoner's address, as well as to the reply of the prosecutor in their support, subject, however, to this remark, that in his attack upon the character of Manning, the prisoner has alluded to subjects which are irrelevant, and could not legally come under the cognisance of this Court.

The improbability of the story is argued from the evidence of the volunteers called, that they did not hear of it that Saturday afternoon or the Sunday on their march. Some remarks have been made by the prisoner that Manning did not complain of or communicate the act to Berry on Saturday, or to Captain Ford on Sunday. You will consider whether the time was favourable for communications implying some reproach upon two officers, or these volunteers—persons to whom it is likely such communications would be made. You will probably think that it is with much greater reason that the prisoner appeals to Captain Astwood's evidence, that though Ensign Cullen sat by Astwood at dinner, and their conversation was free, and on the subject of their respective marches, Ensign Cullen made no mention of any men having been shot that day. This, you will remember, was at a time when, and in conversation with a person in regard to whom, there could apparently have been no reason for concealment.

There

There can be no doubt that Assistant-Surgeon Morris was ill on that day; the question is whether he was incapacitated while at the Post-office by that illness from doing that with which he is charged.

On this point you have the following evidence:—In addition to what they have stated as to his share in the shooting of the men, Manning, Duany, and Anderson represent him as moving about, after returning from the shooting, and going to the river, apparently to bathe. On the other hand, Ensign Cullen says that, on arriving at the Post-office, Assistant-Surgeon Morris was almost exhausted, and was assisted into the little room, and placed on a table, where he lay till he went on to Golden Grove, that he was so ill that Ensign Cullen endeavoured, though unsuccessfully, to procure a vehicle for his conveyance; he was incapable of giving any order, and that he was attended by the hospital orderly, Thomas, and by Maddix, and that on leaving the Post-office he could not mount without assistance, and was obliged to be held on his horse. Maddix says that he attended Dr. Morris the whole time they were at the Post-office, and that neither of them left the room. He differs, however, from Ensign Cullen on two points; for he says that he alone was in attendance on Dr. Morris; and that, on arriving, Dr. Morris dismounted, and on leaving mounted without assistance. Q. 1893. 1806. Q. 1810. 1865. Q. 1812. Q. 2079. 2091.

The other soldiers of the detachment who have been called all say that they did not see him outside the Post-office during their halt there, and they all speak of themselves as being in and about the building during the whole time. It is scarcely possible that he could have come out without being noticed by them.

To prove that no men were shot on that march, the prisoner has called Ensign Cullen, Wolstenholme, Serjeant O'Connor, Corporals Hunter and Maddix, and Privates Gordon, Blythe and Leslie; Police Serjeant Drysdale, and Mr. Berry, the volunteer; all of whom were at the Post-office at some time during the halt on 21st October 1865. I need not trouble you with Drysdale's evidence, for as he left the Post-office before the prisoners are alleged to have been brought there, and as he went to Golden Grove while they were brought from Duckenfield, and therefore could not have met them, his evidence is not to the point. Berry was sent with Brandon by Lieut. Adcock, to call in Ensign Cullen. He arrived at the Post-office about 2 P.M., that is after the time at which the men are said to have been shot, and he returned with Ensign Cullen to Golden Grove. He states that he did not see or hear of any men having been shot. He says, too, that he went into the grass-piece. The prisoner has called your attention to the improbability of his going in there without seeing the dead bodies had they been at the spot alleged. You will, I doubt not, give full consideration to his remarks, bearing in mind that, in answer to a question from the Court, Berry said, when he went, he did not see any bamboo draw-rail in the logwood hedge, but only a bamboo fence. Q. 2352.

You will probably think that the real strength of the defence lies in the evidence of Ensign Cullen and the soldiers of the detachment. They all, with the exception of Hunter, swear that they were at or about the Post-office during the whole time of the halt on that Saturday, and that no prisoners were brought in or shot.

Hunter is the only soldier, except one mentioned by Bryan, specially named by the witnesses for the prosecution as taking part in the transaction. This he has explicitly denied. In addition, it is contended that he had left the Post-office before the time at which the prisoners are alleged to have been brought in; and great stress is laid upon the point in the address of the prisoner to you.

The evidence offered is this:—Ensign Cullen states, that about a quarter of an hour after his arrival at the Post-office, he sent Hunter on with 10 or 12 men, and saw them go. Maddix and Gordon agree with him as to this advance-guard being sent on. Blythe says, there was an advance-guard under the command of Hunter all the way from Manchioneal, and that it went straight on without stopping at the Post-office. Hunter's own account is different; he says he was sent on alone; that some of the regiment, whose names he does not know, came after, but did not go with him. O'Connor does not remember if an advance-guard was sent on. Wolstenholme was not asked any question on this, but he does state that, on reaching Golden Grove, he saw a few men of the detachment who had gone on previously. Leslie distinctly contradicts this account about Hunter, for he says that as Hunter marched off, the rest were falling in to march to Golden Grove. This is the evidence of the principal witnesses on this subject. The prisoner has pointed out to you all the other evidence in the case which tends to corroborate, and the prosecutor that which tends to contradict, this account. It is for you to consider what credit you think is to be attached to the alibi which is sought to be established in favour of Hunter. Q. 1822. Q. 2072. 2356. Q. 2433. Q. 1720. Q. 1722. Q. 2187. Q. 2266. Q. 2278. Q. 2467.

I have dwelt on the chief points in both these cases, at a length which may appear at first sight unnecessary after the elaborate analysis of the evidence made by the prisoner and the prosecutor in their respective addresses, but I have done so in the hope of assisting you by placing in juxtaposition before you the different portions of the evidence, as they present themselves to the mind of one bound by the instructions issued for his guidance "to maintain a perfectly impartial position."

It is now for you to decide whether the prisoner did the acts charged cruelly, wantonly, and wrongfully, and not in good faith.

If you come to the conclusion that he did either or both of these acts, but can see in the circumstances evidence of honest mistake on his part, of belief, reasonably entertained, that he was acting in the discharge of his duty, though he may have been acting beyond the sphere of his ordinary duty, he is entitled to an acquittal in regard to such act. But before you come to the conclusion that he did either of the acts charged, you will

will not only carefully consider the suggestions offered by the prisoner in his defence, but also, in willing performance of your duty towards him, of yourselves examine whether the evidence adduced against him appears to you satisfactory, independently of and beyond all that he has urged on his own behalf.

H. J. Maclean,
Capt., Rifle Brigade,
Deputy Judge Advocate.

Kingston, Jamaica,
2 February 1867.

The Court is then closed for the purpose of deliberating on its

FINDING.

Finding.

The Court having maturely weighed and considered the evidence before it, together with what has been urged by the prisoner in his defence, is of opinion, with regard to the first charge, that he, the prisoner, Staff Assistant Surgeon Henry Morris, is "Not Guilty," and acquits him of the same.

And with regard to the 2nd charge, that he, the prisoner, Staff Assistant Surgeon Henry Morris, is also "Not Guilty," and accordingly acquits him thereof.

R. T. Farren, Colonel,
And Lieut.-Col., 4th Depôt Battalion,
President.

H. J. Maclean, Captain, Rifle Brigade,
Deputy Judge Advocate,
Kingston, Jamaica, 2 February 1867.

APPENDIX.

DOCUMENTS ATTACHED TO PROCEEDINGS.

Appendix (A).

(A.)

PROSECUTOR'S ADDRESS.

Mr. President and Gentlemen,

As prosecutor, I have to submit to your investigation two charges against Staff Assistant Surgeon Morris, the first, for having shot to death a man called William Gray on the 18th of October 1865, at or near a place called Grange Hill, in the parish of St. Thomas-in-the-East, in the county of Surrey, in this island; and the second, for having caused three men to be shot to death at a place near the iron suspension bridge at Duckenfield estate, and the Plantain Garden River post-office, in the parish of St. Thomas-in-the-East, in the county of Surrey, in this island, on the 21st of October 1865.

It is now a matter of universal history, and must therefore be in your knowledge, that at that time martial law prevailed in the part of this island known as the county of Surrey (with the exception of the city of Kingston), it having been proclaimed in consequence of disturbances which had taken place in the parish of St. Thomas-in-the-East. For the suppression of such disturbances and the restoration of public tranquillity, and under the authority of martial law, military operations, somewhat extensive and rigorous, became necessary and justifiable; and in the course of this investigation it will be shown to you that the Legislature of the Colony, with the concurrence of the Imperial Government, have indemnified all acts done in good faith in suppressing the disturbances and punishing the wrong-doers. I have shortly adverted to this, because it will, I respectfully submit, be the duty of the Court to inquire and consider how far the offences charged can be justified or excused by the legislative enactment to which I have referred. It is my duty to state, Mr. President and Gentlemen, that the cases which I am about to submit to you have been made the subject of investigation, because they present features which seem to divest them of all pretence for saying that the acts complained of were necessary, either to the suppression of disturbances or the adequate punishment of any imputed offence.

Respecting the first charge, it is my duty to state that in the preliminary investigation which I thought proper to make into the evidence to support it, there appears to be some discrepancy of testimony. I am prepared to bring before you and examine seven

seven witnesses, who will each depose that, in obedience to the order of the prisoner, the deceased, William Gray, was shot to death; two of these witnesses speak to the shooting, but differ as to the mode by which it was done, not only as between themselves, but also from the other witnesses. One of these two witnesses will state that the prisoner himself shot William Gray with a pistol, which he had three or four times previously presented at him; the other will state that the prisoner took a rifle from a soldier who was standing near, and discharged it at the deceased. It will be for you to judge, after seeing the witnesses and observing the manner in which they give their testimony, how far you think the story is true in its main incident; that is to say, that William Gray was, either by the prisoner himself or by some other person acting under his order, shot to death; and should you be of opinion that the act was done by a soldier acting under the prisoner's orders, then, that the two witnesses who differ from the others are mistaken as to the manner in which the act was done. That William Gray was put to death, and is not now, and has not since the 18th October 1865 been alive, seems beyond human doubt.

All the witnesses who speak to this case state that a party of soldiers were on the march near Grange Hill, and not far from Manchioneal, Dr. Morris being with them; that William Gray was seen to approach in a respectful attitude to the prisoner, when it appears, upon hearing Gray's name, a soldier remarked that he had a list in the barrack with that name upon it, and that he must be the same man, whereupon the deceased was ordered to stand off, and was forthwith shot to death by one or other of the means before mentioned. There will be evidence of the identity of the body by other witnesses who did not see the shooting, and of permission being asked of the military authorities, and given, for the burial of the same.

With regard to the second charge, I have to state that the facts which are likely to be established in evidence are shortly these: A detachment of Her Majesty's 1st West India Regiment, under the command of Ensign Cullen, with the prisoner, Staff Assistant Surgeon Morris, in attendance as medical officer, was at the Plantain Garden River post-office on Saturday, the 21st of October 1865; while there, three prisoners, it will be deposed, were brought to the place, charged with stealing nails and rum; there was a manifested intention to flog them for this offence, when, at the instance, and almost, I may say, according to the direction of the prisoner, Dr. Morris, the three prisoners were put to death by being shot.

On the following day (Sunday) the three bodies were buried, and this was done by some labourers who resided in the neighbourhood, and will give what seems to be satisfactory evidence of the identity of the bodies so buried with those subsequently exhumed.

The tragic narrative which I have condensed into this short address will, by reason of the course of proceedings peculiar to courts martial, exhaust much of your time to go into evidence of all its details, but I think that the conclusions from the evidence that will be laid before you will be—

1stly. That the three men were shot to death.

2ndly. That Staff Assistant Surgeon Morris caused them to be shot to death.

3rdly. That he did so cruelly, wantonly, and wrongfully, and not in good faith for the purpose of suppressing the insurrection or the preservation of the public peace.

There is one remark which I hope the Court will allow me to make before concluding, with regard to a circumstance which is, strictly speaking, beyond the present investigation. As Prosecutor in another trial just concluded before a court martial (of which you were all members), of another officer, arising out of the same facts which I have laid before you in this case, I was obliged, in the discharge of my duty, to introduce the name of Dr. Morris, and the share attributed to him in the transaction. As I was thus compelled to speak of the prisoner while awaiting his trial in his absence, I feel it due to myself, and fair to him, to take this opportunity of expressing my regret to you in his presence, that that course was necessary; but your own recollections of the other trial and the evidence which I shall bring bring before you in this trial will show you that no other course was open to me.

C. F. J. Daniell,
Lieutenant Colonel, 28th Regiment,
Prosecutor.

Kingston, Jamaica, 11 Dec. 1866.

R. T. Farren, Colonel,
President of the Court Martial.

Kingston, 11 Dec. 1866.

Appendix (B).

(B.)

THE LAWS OF JAMAICA.

ANNO REGNI VICESIMO NONO VICTORIÆ.

CAP. I.

AN ACT to indemnify the Governor, and all other Officers and Persons concerned in Suppressing the late Rebellion in this Island.

Preamble.

WHEREAS, being seduced by the insidious counsel of wickedly designing persons, many of the Queen's subjects in this island conspired by force to overthrow the constitution and government here established by law; and, in furtherance of such their purpose, did, with force, and in confederated multitude, commit, on the eleventh day of October, in this present year of our Lord, one thousand eight hundred and sixty-five, and on divers other days then following, in the parish of Saint Thomas-in-the-East, many burglaries, robberies, arsons, murders, and other felonies, with treasonous purpose, in renunciation of their natural allegiance, and to the intent of the general massacre of all loyal and well-disposed subjects of the Queen here dwelling: And whereas upon being informed of such the aforesaid atrocities, his Excellency Edward John Eyre, esquire, the Governor of this island, with the advice of a council of war, and in order to prevent the extension of the said rebellious outbreak, did proclaim that martial law should obtain and prevail throughout the county of Surry, with the exception only of the city and parish of Kingston: And whereas, under God's providence, the military and naval forces of the Queen, with the loyal co-operation of others Her Majesty's faithful subjects in this island, have arrested the spread of this rebellion, and saved the lives of law-abiding citizens, from imminent general sacrifice: And whereas military, naval, or civil authorities, necessarily employed in the prompt suppression of the atrocities aforesaid, may, according to the law of ordinary peace, be responsible in person or purse for acts done in good faith, for the purpose of restoring public peace, and quelling the rebellion aforesaid: And whereas, it is expedient that all persons whosoever, in good faith, and of loyal resolve, have acted for the crushing of this rebellious outbreak, should be indemnified and kept harmless for such their acts of loyalty: Be it therefore, and it hereby is enacted by the governor, legislative council, and assembly of this island,

Personal actions, indictments, prosecutions, &c. against civil or other officers, and persons acting under orders, from promulgation of martial law, made void, and such persons indemnified.

First.—That all personal actions and suits, indictments, informations, attachments, prosecutions, and proceedings, present or future whatsoever, against such authorities or officers, civil, military, or naval, or other persons acting as last aforesaid, for or by reason of any matter or thing commanded, ordered, directed, or done since the promulgation and publication of the proclamation of martial law aforesaid, whether done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, in furtherance of martial law; that is to say, on, from, and after the thirteenth day of October last past, and during the continuance of such martial law, in order to suppress the said insurrection and rebellion, and for the preservation of the public peace throughout the island, shall be discharged and made void; and that every person, by whom such act, matter, or thing shall have been advised, commanded, ordered, directed, or done for the purposes aforesaid, on, from, and since the said thirteenth day of October, and during the existence of such martial law, shall be freed, acquitted, discharged, and indemnified, as well against the Queen's Most Gracious Majesty, her heirs and successors, as against all and every persons and person whomsoever.

The governor and all other persons also indemnified for all acts done in order to put an end to said rebellion, which acts are declared lawful.

Second.—And it is hereby also enacted, That his Excellency, Edward John Eyre, esquire, captain general and governor in chief, and all officers and other persons who have acted under his authority, or have acted *bonâ fide* for the purposes, and during the time aforesaid, whether such acts were done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, are hereby indemnified in respect of all acts, matters, and things done in order to put an end to the said rebellion; and all such acts so done are hereby made and declared to be lawful, and are confirmed.

To remove doubts as to legality of acts done, governor to declare them done by authority, &c.

Third.—In order to prevent any doubt which might arise, whether any act alleged to have been done under the authority of the governor, or to have been done *bonâ fide* in order to suppress and put an end to the said rebellion, was so done, it shall be lawful for the governor for the time being, to declare such acts to have been done under such authority, or *bonâ fide* for the purposes aforesaid; and such declaration, by any writing under the hand of the governor for the time being, shall, in all cases, be conclusive evidence that such acts were so done respectively.

(C.)

Appendix (C).

Permission to Bury a Dead Body.

The bearer, Stephen Johnson, has permission to bury a dead body at Grange Hill.

L. B. Hole, Captain,
Commander.

Manchioneal,
18 October 1865.

(D.)

Appendix (D).

Handwriting of *Stephen Grant.*

(E.)

Appendix (E).

3rd West India Regiment.

Officers on the Sick Report.—Jamaica, 19th December 1866.

Rank.	Names.	Disease.	Admitted.	Discharged.	Remarks.
Staff A. Surgeon	H. Morris -	Fever - -	19 Dec. 1866.	—	—

W. Marley, Major and Lieut. Col.,
Commanding 3rd W. I. Regiment.

(F.)

Appendix (F).

Medical Report as to Illness of Staff Assistant Surgeon *Morris.*

Up Park Camp, Jamaica,
19 December 1866.

I certify that Staff Assistant Surgeon Henry Morris is at present suffering from fever, and unable to attend the sittings of the General Court Martial at Kingston Barracks.

John Dunlop, Staff Surgeon.

Received 11.45 a.m., after Court had adjourned. *H. M.*

(G.)

Appendix (G).

Medical Report as to Illness of Staff Assistant Surgeon *Morris.*

Up Park Camp, Jamaica,
19 December 1866.

Sir,

With reference to the memorandum about Staff Assistant Surgeon Morris, I have the honour to inform you that in my opinion that officer will not be able to attend the General Court Martial before Monday, the 24th December 1866.

I have, &c.
John Dunlop, Staff Surgeon.

Lieut. Colonel Harley,
Commanding 3rd W. I. Regiment.

Appendix (H).

(H.)

Opening Address.—Prisoner's Defence.

Mr. President and other Honourable Gentlemen of this General Court Martial,

The extreme patience with which you have been obliged to listen to—perhaps to be shocked at—the testimony for the prosecution against me, has, under the advice of others and according to my own wish, induced me to refrain from now at any length commenting upon the statements already made by the several witnesses, or from now riddling (as I will by and by) that evidence to which even the prosecutor, "Col. Daniell," under the highest professional authority, was forced to apply, in a certain view, the term "devilish!" And I take this course, the rather that the evidence in defence, and the address of Ensign Cullen upon one of these charges, has (I believe in the minds of unbiassed men, and I would fain confidently trust in yours also) so completely exposed the characters and the motives of the witnesses for the prosecution; their glaring contradictions, their extraordinary facilities of invention, their utter want of reliability on oath, and their recklessness of truth (either from ignorance, or delusion, or persuasion), as to warrant me in relying to a great extent upon the arduous and painful experience which you yourselves (no less than the Royal Commissioners, at last, with others in the Colony) have now gained for the vital object of enabling you to arrive at a right understanding and appreciation of such testimony. Allow me, Mr. President and honourable gentlemen (in consequence of a recent pardonable mistake of Colonel Daniell), here to remark, that if the prosecutor had, before he at all addressed you, referred to the records of the Colony or to official documents of the several branches of the Legislature, or even had made proper inquiries as to the state of certain so-called religious associations in Jamaica (those which in England most ignorantly and lamentably pass for such), he might readily have understood, or he might even now comprehend, that (in Jamaica at least) to denounce sanctimonious, hypocritical, and designing pretenders to and traders in religion, is not to sneer at religious faith; and he might have learned, too, how often religious faith has been grossly perverted in this Colony to the basest uses, political and parochial, uses damaging not only to individuals but disastrous to the State, and he then might understand how fearfully (in the absence of any force of public opinion, or of moral influence amongst different classes of colonial society, to any proper, legitimate, and necessary extent) such men as the poor ill-treated men with whom he has been led to sympathise;—such men as Manning and Anderson—Manning the charged and flying rebel, Anderson the flogged rebel and pretender to revelation—men as fanatic and desperate as they are shrewd and wily, can (goaded on by a spirit of pretentious religious fanaticism, fancied wrong, and keen revenge) impose upon and prevail over the minds of the lower orders of people; uneducated indeed, yet facile and cunning, and of one —— Brooks, for what may now be surely not untruly termed a "devilish" traffic and perversion of dates, and persons, and facts, to carry out a diabolical end by means, plausible forsooth, yet most unreal and devilish.

You, Mr. President and gentlemen, truly may not altogether thereby understand how such a man as Brooks could give way to such a person as Manning; but when I prove to your utmost satisfaction (as I think I shall) that that same man Brooks, a discharged book-keeper from several estates, a man of slothful and most cowardly character, during martial law never quitted Golden Grove on that Sunday, the 22nd October 1865; never took or received any prisoners on that day; never on the morning of that day saw the Holland Bay-road or Manning; was ill in bed that day; was obliged to be provided with medical attendance and a nurse that day, at the kind and charitable instance of his overseer, Mr. Chisholm; and thereafter, too, was in a helpless state, almost unable to move, from about mid-day on the 21st October, Saturday, to the next Monday or Tuesday, or until his discharge from Golden Grove. And when I show you, moreover, that this man's own written memoranda of occurrences (in which he may be supposed to have participated), and which he would have recorded, and also have bragged and boasted of (which indeed he never did, even to his dearest and nearest relative), confirm the truthfulness of such my assertions. Yes, when I say I show all this, what opinion too damning can you, ought you not, Mr. President and honourable gentlemen—aye and ought not, and will not every honourable man, in or out of this Colony—form of Brooks and Manning, and others, and of their combination on this fearful trial to strengthen and to support the conspiracy already so flagrantly manifested before this high tribunal in Ensign Cullen's case? Can you not then, Mr. President and honourable gentlemen, conceive that, though such influences and motives cannot be clearly proved on oath by direct evidence, and although you cannot dive into men's hearts or minds, and lay them ragged, and naked, and bare, yet, nevertheless, conclude that those motives and influences really must and do exist, and (alas! for human nature) for so devilish a purpose as ever made horrible the records of courts of justice, and held out itself before a civilized world as a beacon to those whose sad and stern duty it is to decide in a criminal court upon the life long happiness, and fate, if not still, of a brother officer (degraded by calumnies, by lies, and by the perversion of facts), yet, after all, of a fellow creature yet innocent! Merciful and just God! what man's character or life is safe, if (which Heaven forbid) this Honourable Court should be overborne by such wretched testimony, as abominable as wretched, pitiable only for its own frightful enormity.

Mr. President and Honourable Gentlemen, in reference to the other charge against me, I find it almost only requisite to refer to the grave doubts and contradictions most fairly mentioned by the prosecutor himself, regarding the witnesses for the prosecution. You must indeed have, yourselves, already carefully noted the wide differences (not mere discretionary

(K.)

ROUGH EYE SKETCH OF GRANGE HILL.

pancies) in the evidence of these witnesses regarding distances, persons, times, means, and orders given, and actual occurrences, on the self same occasion; and you yourselves, perhaps, may have readily concluded that such witnesses could not have been speaking to what they themselves actually saw or heard, as events transpiring, or even as to the persons alleged to be then and there present, and concerned in this charge of shooting William Gray. Appendix (H).

Mr. President, and Honourable Gentlemen, you will on the whole be satisfied that, whatever doubts may exist as to the deaths of the men in question, none can reasonably prevail respecting the falsehood of the charges against me. Of Ensign Cullen's innocence, I pledge all of present or future that I can; that he has not been victimised may I not here express a solemn and sacred hope and conviction. For myself I may say, that when, Mr. President and Gentlemen, there have been heard and considered the evidence on my behalf, and the address which I shall be allowed at its close, I feel trustfully certain that the finding of this court martial will not trench upon the honour of the service, and yet will leave me without the stigma of having brought disgrace upon that medical and military profession to which it has hitherto been my pride, as I hope it hereafter will be my honour, to belong. These accusations are now to be far more fully investigated, and more truthfully brought to light, as scrutinized by you on an enlarged experience; of your patient forbearance, I am assured; of your dispassionate and satisfactory finding I rest convinced.

Henry Morris,
Staff Assistant Surgeon.

(I.) Appendix (I).

Memorandum respecting Distances at Iron Bridge and Grange Hill.

20 paces from 2nd post to road front of bridge.
69 paces from this point to bamboo rail.
9 paces across road from bamboo rail.
296 paces from the road opposite bridge to Grange Tree on the Holland Bay-road past bamboo rail.
From logwood fence now six feet, cut down six feet, 12 feet altogether.
From turning road or track up to Grange Hill, where bread-fruit trees are, to Muirton 1¼ mile; from this turning to Hayning-road ¾ mile.
385 paces from bread-fruit trees to road by the same track.
7 paces between bread-fruit tree.
58 paces to old building and little stream.
56 paces from old building to house at Grange Hill.
159 paces from house to place where B. G. said to be buried.
Road to Hayning further from Muirton than the road to Grange Hill.

(K.) Appendix (K).

Rough Eye Sketch of Grange Hill.—*See Drawing opposite.*

(L.) Appendix (L).

Extract from Letts' Diary, 1844.

Shot—
4 at Winchester.
3 by me at G. G.
1 hanged at Port Morant.
4 „ Morant Bay.
30 shot at Port Antonio.
Riot commenced, Thursday, 12th October 1865.
In the woods 5 days, no food; came to Morant Bay, 17th Octr. Mr. Dunn died same day, after being in the Bay 2 hours, came along with me in boat, 3 hanged at M. Bay on Wed., 18th Octr.

January [1st Month] 1. Monday [1–365] 1844

Circumcision.
Came to Morant Bay on the 17th Octr., Tuesday. Mr. Alx. Dunn died same day, he was well, spoke sensibly, and died two hours afterwards, buried him next

—2. Tuesday [2–364]—
day Wed.; Riots commenced on Wednesday, 11th Octr. 65, slept in the bushes five nights and days, made prisoner twice, two shots fired at me, one took effect thro' my hat; gun boat arrived at Morant Bay

—3. Wednesday [3–363]—
left Morant Bay at 5 o'clock on the 21st of October 1865, got to G. G. at about 3 o'ck., p.m.

C. A. Brooks.

Appendix (L).

1844	4. Thursday [4–362]	1st Month January.
	Thomas Johnson, shopkeeper.	
	—5. Friday [5–361]—	
	Div. due at the Bank, So. Sea and India Ho. payable about Wed. next. ○ 5h. 34m. p. m.	
	—6. Saturday [6–360]—	
	Epiphany.	
	Bill Brown convicted for murder of C. Henry.	

(M.)

Appendix (M).

THE CLOSING ADDRESS of Staff Assistant Surgeon *H. Morris*, as prepared by the Professional Friend, allowed by the Court.

Mr. President and Gentlemen of this Honourable Court,

WITH feelings of the most unfeigned thankfulness for your patience and attention during a trial, which to you has caused very great inconvenience, and to me much deeper mental solicitude than I have been able to undergo, I at once proceed with my closing address on these most momentous issues.

Let me here, in taking a review of the evidence on the first charge, "That of having wantonly shot to death William Gray on the 18th of October 1865," again remind you of the grave doubts which the prosecutor, in his opening speech, cast upon this charge.

Now, it is evident that this accusation points to but one particular day, and that day, Wednesday, the 18th October 1865, to but one particularly remarkable spot, and that spot at, or adjacent to, two bread fruit trees of curious proximity (seven paces), on an old abandoned road, or track, leading apparently from Muirton, just on this side of the Manchioneal Road, out of the present main post-road from Muirton, towards Quaa Hill, up and over the brow of a village called Grange Hill, and circuitously down again to the main post-road, at a point on the main road about one and-a-half miles from Muirton, Grange Hill itself being bounded on the south by that main post-road, and the sea, in almost a straight line. It is charged too that a revolver, then said to be in my possession, formed a most important feature, at this particular spot, at the time of the shooting of William Gray; it is charged too that the sight of a list at Muirton, with the name Billy Gray on it prior to, or on, the 18th October 1865, became the subject of discussion at the time at this spot; and that this act was perpetrated by me, or my orders, in the presence there at that time of seven witnesses for the prosecution, and moreover that it took place in the presence of Ensign Cullen and Corporal Hunter at that spot, on this track or road.

But how do the seven witnesses verify these several points? Do they not most materially differ from each other in their account, as anticipated by Colonel Daniell? Let me then crave your close attention to some analysis of the evidence on these points.

First.—As to time:—

John Hamilton gives neither date nor week, but on "Wednesday."
John Steele gives only "a Wednesday in October."
Elizabeth Curate only "Wednesday in October."
John Curate states no day, or month, or year.
W. Bourke, who lived at Scott's Run (on another road altogether), certainly swears to the "18th October, a Wednesday."
Ellen Gray says it happened in "October," but did not know the year.
Robert Deacon speaks only of "October last year," but gives no date or day of the week.

The Court will remember that the detachment arrived at Muirton only on the 15th or 16th with me, and left on the 21st, with me in company, for Golden Grove, where I remained for eight or nine days; clear proof, therefore, of the precise date is surely of the most vital importance for the maintenance of this cruel prosecution. Suppose that these persons, or, some of them, were really speaking of some other Wednesday than the 18th, I certainly could not have been at Grange Hill then.

Second.—As to the presence of these seven witnesses at the time and place:—

John Hamilton swears that no one else but himself, John Deacon, and Robert Taylor were present.

John

John Steele swears that none but he, Deacon, Burke, Mrs. Curate and her son, were present.
Mrs. Curate swears that none but she, her son, and Ellen Gray were present.
W. Burke swears to the presence of none but himself.
Ellen Gray swears exactly of the same persons only, as Mrs. Curate.
Robert Deacon swears to none but himself, and perhaps John Hamilton.

Suppose it to be that these several witnesses are speaking of different dates, what becomes of the worth of their supposed corroborative evidence?

Third.—As to the officers present at the time and place:—

John Hamilton speaks only of "Dr. Morris being there"; he cannot, however, identify me now, how much less so then! He does not venture to swear to the presence of Ensign Cullen or Corporal Hunter. If I were really known then at all, surely Ensign Cullen, and Corporal Hunter, a native of the parish, would have been.

There cannot be a doubt that my name, in St. Thomas-in-the-East, was of common report everywhere amongst all people.

John Steele speaks of Dr. Morris, but nothing of Ensign Cullen; and he says too, that there were plenty of white and black soldiers present.
Ellen Curate speaks only of white men, but neither of any doctor, nor of Ensign Cullen, nor of a corporal. In the first part of her evidence she said she did not see the white man do anything before Billy Gray was shot; she cannot, however, identify me as the doctor.
John Curate speaks only of one white man, but not of Ensign Cullen, nor of any doctor, to his own knowledge; nor does he now identify me.
W. Burke alone swears to Ensign Cullen, and to myself, as being both present; if he was wrong as to Ensign Cullen may he not easily be mistaken as to me.

It is to be observed that he saw me at Scott's Run that same day; was it not there alone that he saw me?

Ellen Gray swears nothing about any doctor or officer; she said she did not know an officer from a soldier, but that there were plenty of white soldiers.
Robert Deacon says nothing of Ensign Cullen, or any other white officer (a remarkable contradiction in his evidence will be presently noticed); he certainly speaks of me, but then it must be remembered that he saw me that same day at Hayning; it may be that it was on the Hayning Road alone that he saw me.
Neither Stephen Grant or Robert Caine pretends to have seen any officers or soldiers on the Grange Hill track at all, though both of them were there in the morning, and actually saw a person, described as Billy Gray, alive that same morning; Caine too says, that black soldiers alone were plundering at Grange Hill on Monday and Tuesday, the 16th and 17th of October 1865.

Fourth.—As to the number of times that this revolver was said to have been pointed by me:—

John Hamilton says five times, and also three times.
John Steele, John Curate, Robert Burke, and Robert Deacon say five times.
Elizabeth Curate says two.
Ellen Gray says three.

Does not too the pretended extraordinary operation of pointing this broken revolver five successive times (the notion of which was asked by Mr. Scoltock, and positively by him denied), at this place at about 8 a.m. on the 18th, evince of itself a gross absurdity in the evidence of this concocted tale; even supposing my revolver had been taken out with me in its then condition. This absurdity indeed, is only surpassed by the evidence of one of the same witnesses, who swore the revolver would not go off, that I took fresh powder and caps and put them in a revolver, which, as the Court must know, was used with neither powder or ball, separately, as in ordinary pistols, but with cartridge.
Such evidence may well open the mind of the Court to the loose lying tales that were scattered over the country, from the very time of the first rumour of the Royal Commission with regard to the military.
As to the weapon, with which Billy Gray is alleged to have been shot, the Court will remember that John Hamilton swore that Billy Gray was actually shot at and killed by me with this revolver, and not by any rifle, while the other witnesses swear that the shooting was by a private soldier (a yellow-skin man, as he is described by four or five witnesses).
Deacon too at one time pretended, if not before the Royal Commissioners, at any rate to the prosecutor, that I, myself, shot the man, with a rifle taken from a white soldier; and, again, that the white soldier alone shot Billy Gray.
Again, as to the story about the list, which is not attempted to be produced, or shown to have come to my knowledge,—

John Hamilton and William Burke swear that it was Deacon, not any corporal, who mentioned Billy Gray's name as being on any list or receipt.
Deacon swears it was somebody else, and not he.

Appendix (M).

As to the wounds on the body; the Court will itself have noticed that the wounds said to have been on the dead body, alleged to be that of Billy Gray (said to be found about 4 p.m. and buried the 19th), do not altogether agree with those wounds which, as it is said, were seen to have been inflicted on some body about eight o'clock a.m. on the 18th.

As to the burial; the Court will remember that for a long time during the examination of the witnesses there was a conflict of evidence between Grant and Caine, as to the day of the burial of this same alleged body.

As to the certificate, it really proves nothing. It may be remarked that there does not in the certificate appear any time when the person stated by somebody, not Captain Hole, to be dead, was killed, nor yet does the name of any person for this dead body appear. The evidence of Captain Hole, and the most reasonable probabilities of the case, surely throw doubt whether that paper was not really given to Stephen Johnson only, and not to Stephen Grant. Captain Hole swears he believes it was really given to the man whose name it bears, not Stephen Grant, and he gives sufficient reasons.

As to the particular road taken (an old road, now a track), up which the detachment of 50 men are said to have come on the 18th October, at about 8 a.m., just after leaving the Manchioneal River—

John Hamilton does not pretend to give any information whatever.

John Steele says, "We came from Muirton to Deeling, and after coming back from Deeling we came to Grange Hill."

He himself had been taken prisoner with Harris, on the Monday, and conveyed to Muirton. Is it not singular that this man, who does not appear to have been the guide, should have followed the detachment from Muirton; he assigns no plausible reason or order for his so doing; if he was at the rear could he have possibly seen the spot he describes, or the circumstances he swears to?

Elizabeth Curate, John Curate, and Ellen Gray do not profess to say, nor indeed could they say, that they saw whence and by what road the detachment came.

William Burke professes only to say he saw the soldiers coming from Deeling as he was going from Scott's Run to Grange Hill, on his way to Muirton, to get a protection paper; the knowledge which the Court may have of the locality will tend to throw doubts on this statement. If he was at the Grange Hill track, towards the Hayning side, surely he could not have seen up or down the Deeling Road, on the other side of the two bread fruit trees. Is it at all improbable that he is confusing some other day when soldiers did go to Deeling with the day in question. He states that he returned back with the soldiers to Scott's Run, and they left him there; and yet his special object was to go to Muirton that day, in the morning, so as to get a paper for protection from these very soldiers. No reason or order is put forward for this alteration of his desire to get an order for protection from Captain Hole, after too he had only left about a mile to complete his journey from Scott's Run to Muirton on that day.

Robert Deacon certainly says that he started from Muirton, and came on by this road or track, but the Court will, in dealing with this piece of evidence, contrast it with the other glaring contradictions in evidence of this same witness, and his evidence, as compared with the other witnesses for the prosecution, as noticed even by Colonel Daniell.

Stephen Grant and Robert Caine are of course unable to give any information as to this old road or track, on the 18th, and as to the course taken by the detachment.

It is remarkable that not a single witness attempts to tell of the road on Grange Hill, which they say the soldiers took after this alleged shooting. When it is remembered that the present main post-road bounds Grange Hill, is it not probable that, though they did see soldiers, they only saw them at the foot of the hill on that road.

There was no cross-road from Deeling or Grange Hill to Hayning, or Scott's Run, or Jericho; no negro ground track (and there are those concerned for the prosecution who know the fact), could possibly suffice for a body of troops; such a track would only be to the provision field itself. Why should they have moved off the main road at all and taken an old abandoned track, of which they knew nothing at all, with a broad open road before them? In all reasonable probability they must have taken the main road, the best road to Hayning the whole way, and the quickest for their supposed object at Friendship, where they even then thought they were going.

It is also remarkable that there is no evidence whatever of anything else having been done at all, to houses or persons, on the track whereby it rejoins the main road in coming down from the bread fruit trees.

Of these witnesses it is observable that only Hamilton and Deacon were called before the Royal Commissioners; the cases of Alfred Brooks and Manning, and others, may afford some example of the facility with which, in this unfortunate colony, evidence can be strangely forthcoming, at the last moment, upon charges of this kind, for a prosecution which the lower orders think is for the Queen herself, when they get, as they say, the Queen's paper (summons), and money from the Queen's officer, Colonel Daniell.

I cannot avoid pressing attention to the fact, though it is pretended that though Stephen Grant got a certificate for the burial of this very body lying at Grange Hill, though relatives and friends are said to have dressed the body, and were said to have been actually present at the very identical spot at which the person named Billy Gray is alleged to have been buried on Grange Hill (and that spot is said to be well known by living witnesses), there has

has not been in this case, as in the case of the three dead men, of Manning and Brooks notoriety, any evidence of any effort whatever to examine the grave, or exhume the body, or investigate the appearances, which the bones (if any were really to be found existing), presented, as to any one single mark of injury! Considering the recent stupendous anxiety to set the doctors by the ears, to rake up old dry bones as for men (even now rumoured to be alive), how comes there to be no proof of effort to obtain, from any single witness in this case, even a sight of the bones of Billy Gray; or is it that, though that effort has been made, it has been fruitless and vain; or was it indeed that the evidence of Manning and others was so untrustworthy that other evidence, even as of voices from the dead, were to be invoked in all their truth and eloquence for some corroboration? Alas! for the promoters of this prosecution before the Royal Commissioners, there was no old graveyard about Grange Hill. If it was deemed necessary to find bones for M'Caul, for Watson, and for Miles, how strange indeed, is it not, that in the teeth of the prosecutor's admissions on this charge, no bones are produced as for Billy Gray?

Pray allow me even here to remark, if the evidence of Deacon and others is to be believed, in respect of the receipt and list, is there not proof, furnished by the prosecutor himself, that Billy Gray was *bonâ fide* believed, by some person or other, to be a rebel, and that he lamentably, though not wantonly, met his death, if he be dead, in consequence of that character, so reported to Captain Hole? The formalites of courts of justice, or of courts martial, are not required in times of war.

Even upon the case then for the prosecution, may you not yourselves, Mr. President and Gentlemen, with all its conflicting evidence, well consider that the doubts, so fairly expressed by the prosecutor himself, may in the due administration of criminal justice be reasonably entertained by you. In criminal courts there is not, as in civil tribunals, any balancing of testimony; all is thrown against the Crown and in favour of the prisoner.

I will now, with your permission, proceed to comment upon the evidence in defence, and upon the various points which arise for your solemn investigation. They seem to be mainly these:—

1st. Did the troops on that day (18th October 1865), go to Grange Hill?

2nd. Had I any revolver that day with me at all?

3rd. Did any of the soldiers, by my orders, shoot Billy Gray that day?

As to the first ground,—

Captain Hole states, that on the same 18th October he sent out troops under Ensign Cullen with me, myself, in medical charge (and that at a time too when there was no reason or motive to conceal the killing of any supposed rebel, or other person of the lower orders, or the burning of any house); on his return with me and the troops, at about 4 p.m. that same day, he (Ensign Cullen), reported to Captain Hole where he had gone, and that that was to Hayning and Jericho, and by way of Scott's Run (places which Mr. Scoltock has described), and that he, Captain Hole, on the 19th repeated accordingly; that despatch is accessible to the Court, if not at head quarters, certainly from the Blue Book. Not a word was mentioned of Grange Hill as forming a portion of the line of march. It must be remembered that the troops were that day on a special excursion to a place some way off Muirton, against entrenched rebels. Ensign Cullen would not be likely to dally elsewhere for other very minor purposes. Says Captain Hole, "I received no report (that day, or any other) of any troops going to Grange Hill or Deeling; I never heard of Deeling; volunteers were out that day; two or three men (not Ensign Cullen or myself) went to Grange Hill without any orders."

Corporal Hunter, who knew the country well, who has again been on the very spot, and on that very track, to and down from the bread fruit trees (one against whom no charge rests in this case), swears to this effect:—

"I have never been to Grange Hill before that day I went with Mr. Williams and Ensign Cullen (*i. e.*, 31st December 1866). I never was on that track (the old abandoned road) before, or near the two bread fruit trees, with Dr. Morris and Ensign Cullen. When I went to them lately, was the first time I had ever been there. I was senior corporal on that march with Ensign Cullen; I came back by the same road I went up to Hayning. I know of no other way or track to Muirton, except the way I went, and then by the main road.

"I was only out one march; I returned the same day; that was the day I went to Hayning."

Lewis O'Connor, a serjeant, against whom there is no charge, swears that, on the 18th October 1865, the whole detachment went from Muirton to Hayning. He says, "We took the main road; did not pass through any property; we got on the main road immediately, as they left Muirton; we went on the main road up to Hayning;" he does not know a place called Grange Hill nor Deeling; he says, "that the troops left Muirton between 6 and 7 a.m., and returned about 4 p.m.;" did nothing beyond marching to Hayning, and back to Muirton, during all the intermediate time that he was a full corporal when at Muirton."

John Doolan, private, 2nd, 6th Royals, says, in effect, "I was at Muirton the 18th October 1865; on that morning a party were started at day-break; Dr. Morris was with them; they went down on the main road; Serjeant Webster and I, and others, turned to Grange Hill

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that same day; we asked for Grange Hill; Serjeant Webster and party of the men asked if any black soldiers had been there; we returned to Muirton the afternoon before Ensign Cullen came."

Thomas Gardner, private, 2nd, 6th Royals, was also with John Doolan, and states to the same effect as to Grange Hill that day, after Ensign Cullen's party started, and before it returned; also as to the absence from Grange Hill, that day, of black troops; he states that they left for Grange Hill at half-past 9 o'clock a.m., and returned about half-past 3 p.m.

Fielding Wolstenholme, Company Serjeant Major, 1st West India Regiment, swears, that he, on the 18th October 1865, was Serjeant Major, and went out that day with Ensign Cullen, and me, and the party; on leaving Muirton they took the main road, and then turned to the right to go to Hayning; that the men never left the main road until they turned to Hayning; that they took no short cut, or any other pathway; that the whole of the detachment kept together; that he was with me all the time, very close to me; went to no other place besides Hayning and Jericho; that he knows of no other place, and never heard the name of Grange Hill before.

Jasper Webster, Colour Serjeant, 2nd, 6th Royals: the colour serjeant on this same point corroborates the testimony of the soldiers who went to Grange Hill on the 18th, about half-past 9 a.m., and returned to Muirton about hah-past 3 p.m.

Ensign Cullen, who it will be remembered was mentioned only by one Crown witness, and whose high honour and character have been, I trust, nobly vindicated, who dared to expose himself to public calumny, and scorn and ruin, and to risk himself, almost to the brink of the grave, rather than tell a lie upon his oath, here stated that he was with me the whole time on that march on the 18th; that to the best of his knowledge and belief he never was on that Grange Hill track in his life till recently, on the 31st December 1866, on a special object; that he never lost sight of me that day; that we marched from Muirton to the turning to Hayning; that he never left the main road at all; that he did not then know the name of Grange Hill; that his men did not straggle; that they kept pretty well together on the march on the 18th October 1865; that he went out about 8 a.m. and returned about half-past 4 p.m. to Muirton.

What he repeated on his return, at the very time when neither he or I ever expected to pass through this terrible ordeal, Captain Hole has sworn to and officially acted upon.

As to the second ground,—

Ensign Cullen says, "I am aware Dr. Morris's revolver was sent to England for repairs. I recollect his revolver lying in two pieces, from the day he arrived at Muirton; the pin was lost; he had no revolver in his possession on the march on the 18th October 1865.

John Edge, (2nd, 6th Royals), a non-commissioned officer, states that on the 16th October 1865, on going to Betty's Hope with me, a few men were ordered to dismount and look for my revolver pin and chambers; that he, with others, dismounted and searched; that the chambers were picked up and handed to me; that they could not find the pin, and came to Muirton without doing so; that he was present when I left Muirton on the 18th October, with Ensign Cullen and others, and that I then had no revolver with me; that he was present when I returned to Muirton in the evening, and that I then had no revolver; that the revolver was lying on the window at Muirton House during my absence that day, the room being used as a court-martial room.

John Handley (2nd, 6th Royals), corporal, states to the same fact as John Edge; he actually took the revolver in his hands that day from the same window, which was about five yards from the guard room; he states that it was rusty, that it was deficient of the breech pin. This witness also states that Ensign Cullen did not take out a revolver with him, that there was none in his possession, and that no one else of that party took one that day.

John Doolan states thus, "He employed me to clean his revolver at Muirton; on the same 18th October he went away to do so, but found he could not do so, as it was too rusty, and he had no oil; it was impossible to clean it; he left it in the room, in the same place, in two pieces."

He also states that he saw me that day, when I returned to Muirton, and that I had only my sword there.

Thomas Gardner states, that on this same 18th October he went into the room at Muirton Barracks, where the revolver was lying; that whenever anyone went to see the time, or to get the daily allowance of spirits served, the revolver could be seen there; that he knew it was my revolver, and that he saw Doolan get hold of it to clean it, and that the room in which the revolver was in was occupied by the officers as a sleeping room at night, and as a court-martial room in the day.

John Roach states, that he knew of the loss of my revolver pin, on the 16th October, on the road to Betty's Hope; that he was one of those who dismounted; that the chambers were picked up, not the pin; that he saw it at Muirton House for several days after, up to the 22nd, in the same room spoken of. He also states that he never saw Ensign Cullen with a revolver; that he saw me leave and return to Muirton that day; that I had only my sword when I started, and when I came back I had nothing else but the sword, no revolver.

Besides, the whole of this evidence is most strongly corroborated by Captain Hole himself, who positively swears that, "on the 18th October, the whole of the Wednesday, that revolver was lying in pieces on the window at Muirton, rendered useless by the loss of the pin,"

pin," and that he was certain that my "revolver was lying on the window the day, the 18th, that I was out with Ensign Cullen and his party."

As to the third ground: in addition to the contradictions and uncertainties of the witnesses for the prosecution, I confidently refer to the clear testimony of the witnesses in defence on this charge.

Corporal Hunter deposes on that march on the 18th, he was with me the whole time, and that no person whatever was shot by any soldier by my orders, or otherwise.

Sergeant Major Wolstenholme swears that on the 18th October he was with Ensign Cullen and with myself, that he did not see any man shot that day, that he was very close to me, and must have seen if I had shot a man that day.

Mr. Scoltock utterly denies to those conducting the prosecution, who no doubt referred to Billy Gray as the "negro," that I ever told him, or said in his presence, "That I had snapped my revolver five times in a negro's face, and he never winked, and that I never said anything of the sort."

If I had said so of Billy Gray, why has not some witness of respectability or of any kind, convenient—Manning or Brooks for instance—been called to swear, as they have already ventured to swear so recklessly? Why was not Mr. Scoltock called as a witness for the prosecution? Why, after sending in his name as a witness against me by the customary notice, was his name suddenly withdrawn? How is it, if I made use of this expression, which would have been of so damnatory a character against me, and would have been greedily laid hold of, was not some person called, like another Brooks, in reply, to prove the foul assertion?

The bowels of the earth have been disgorged! The all-time-hallowed graveyard of the dead has been molested; the remains of men who have gone, perhaps years ago, to that bourne from whence no traveller returns, and whose sacred corpses had been consigned to their lowly grave—and, aye, perhaps a happier home—were desecrated, to condemn me!—and, yes! beyond the base insinuation—can you believe it? can you believe it?—of this dastardly calumny? Oh! not a tittle! not a rag of testimony on oath! Not a Manning or a Brooks is there to be thrust forward to warrant this foul slander, this most wicked lie!

Thus, Mr. President and Gentlemen, it is that these distortions of truth, these lying rumours, these diabolical slanders, ever since martial law ceased—ever since the report that a Royal Commission was to be held—ever since the Royal Commission sat—have been set afloat regarding the conduct of the military; slanders as baseless as they are villainous—villainous as those who, from fancied wrong, from hope of gain, from a yearning to gorge themselves with revenge for the blood of rebels against the Crown, have goaded on these charges, have attempted to support them on oath!—such oaths, indeed!

Hear me! The character of the medical branch of the military service, my own worldly position, my honour, my life, my all, is at stake! With the prosecutor, who applied the term "devilish," may I not heartily concur! Aye! so, indeed, it is; and, indeed, I feel it.

Oh! pardon me, Mr. President and Gentlemen. You and each of you might have understood my feelings, had any of you, for your daring deeds in India, endured such a trial as this. Had officers in the Indian rebellion but done in Jamacia what they did do in India, would not my fate, Cullen's fate, have been theirs, had they then but known of these hours of anguish?

But I pass on to add the name of Ensign Cullen to those who swore that no man was shot by my order at Grange Hill; he tells the Court that this could not have been done without his knowledge, and that no such shooting took place at all; he reported, but could not report any man shot that day. Captain Hole's evidence, and his despatch on the 19th of October, abundantly and strongly corroborate the other witnesses. Had William Gray been shot on that day, can you doubt that it would have been talked of at Muirton, or have been reported by Ensign Cullen on the 18th, and by Captain Hole on the 19th of October 1865?

Thus, Mr. President and Gentlemen, do I humbly submit to your less impassioned and better reason and judgment, that not only is each of these points established in my favour by sure and reliable evidence, but that, thus too, does each branch of this subject tend to strengthen each, and the whole of my three propositions as to this charge of wantonly shooting Billy Gray on Wednesday, the 18th of October 1865, during martial law at Grange Hill.

As a last strong corroboration of the falsity of this charge, may I not also refer you to my own oath before the Royal Commissioners in respect of William Gray? What possible motive had I then—had any one then—if I really had shot William Gray (another case brought up at the last moment) or any other supposed rebel, to conceal the act, much less to stamp my future character with perjury? No attempt was then made to denounce any such act as wanton; no one then feared an investigation such as this.

Mr. President and Gentlemen, you have already most patiently listened to the comments made upon the charge of shooting William Gray; pray forgive me if I occupy your time still more at length in offering observations upon the other charge, not only in my own self-protection, but also for the honour of the service. Ensign Cullen has so fully anticipated all that could be urged that I fear you will perhaps deem my address on this same charge (to a certain extent on similar evidence of the same witnesses) somewhat tedious. You are, however, now about to arrive at a conclusion of your labours; and, though there may not be such deep sympathy for me as for a young ensign, I nevertheless am assured that there will be equal consideration and justice

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Proceeding somewhat in the same course of analysis, and now and then referring you to evidence, which you must recollect, and of which you have judicial cognizance, I beg leave to call your attention to the dates sworn to, and the means of knowledge of the witnesses for the prosecution.

Peter Phillips (a former witness, who cannot read or write) now swears that the date the prisoners went to, and were shot near the post-office, was the 1st of October, a Saturday, and that he saw their dead bodies on Sunday, the 2nd; his former oath on this point was:

"Prisoners were brought to my house by one of the constables, and I sent them out to the Iron Bridge on the 21st October 1865. I saw them dead on the 22nd October 1865."
No force of reminder could make him now swear to aught else but the 1st and 2nd October.

Cyphus Wills (a former witness, who cannot read or write) swears, in examination in chief, that it was the 21st October 1865, and that he saw the bodies next day; that it was Mr. Sinclair, at Golden Grove, on the 22nd, who told him the dates the men were shot and buried. You have Mr. Sinclair's denial, and his reasons. On this man's former examination, he swore not that Mr. Sinclair, but that Bryan, a witness for the prosecution, told him, but now more than a year ago. His former oath was:

"Has anybody since told you the date was the 21st, when you took the prisoners?"—"Yes, I heard."
"Who told you?"—"I heard one Bryan, the book-keeper, talk; he said it was 21st."

George Colson (a constable, and former witness) says, "Martial law was on the 21st October." The Court knows it began on no such date (the witness has got the date by heart for a purpose). "As to date," says he, "I cannot tell any more; it was, I think, last year, a Saturday, prisoners taken to the post-office. It was October; I do not know about year; it was last year. I do not recollect saying it was a Sunday. I did say it was not Sunday. I do not recollect saying that. I do not know what day it was."

On his former examination:

"Do you remember martial law time?"—"Yes; it was in November."
"Do you remember soldiers coming to the Iron Bridge during martial law?"—"Yes."
"When was that?"—"They came at Sunday."
"Are you sure it was on Sunday?"—"No; it was not Sunday."

Robert Speed, a constable, states "that the date was the 21st October (Saturday)."

This was the witness who, the Court will remember, though a constable, swore that the rebellion broke out on a Saturday; this is the witness, too, who now, for the first time, invokes the notorious Brooks, whose future evidence is thus being quietly introduced. He could remember the 21st, yet when circumstances were fresh in his memory, in Ensign Cullen's case, he utterly forgot all about Brooks on the 22nd, and that extraordinary (*à la* Munchausen) tale.
The credit given to his evidence will somewhat depend on that given to Brooks.

Richard Francis, a former witness (for whom, as he says, a miracle was performed by some special interposition for him, though not for the man to whom alone he was tied), who cannot read or write, says he was taken up in October last; cannot remember the day; it was last year, but it was on a Friday that he was taken to the Iron Bridge by book-keeper and constables; he again repeats, notwithstanding a little gentle reminder, it was a Friday; he also states he made his escape before he got to the cotton tree.

Samuel Bryan (of such notable character with the Honourable Mr. Hosack, Mr. Georges, Mr. Sinclair, and Dight) says it was on the 21st October 1865. This witness swore to the names of the prisoners. He then stated, on the former trial, he did not know the names of the prisoners, having recently come to the parish; he now states he got the names from the papers: "I read the papers; that is how I know the names now." Is that how he knew the date? for certainly Mr. Sinclair never told him. The Court will remember how positively and repeatedly he swore to the day of Anderson being flogged in his presence on the 21st (Saturday) at Golden Grove, on the same day as he says he saw the prisoners shot; then afterwards saying he was told so, he was not present; and then afterwards, on the next day after the Court had adjourned, and after, as he admits, he had seen Manning and Anderson, and others, the evening of the preceding day; and on the morning of the next day, when he came back before you, he asks to amend his evidence, by stating that he had been at Golden Grove on Sunday, 22nd, and then and there seen Anderson flogged. His excuse was the pocket-book. But when was the entry made as of Anderson's name being there stated as flogged on the 22nd (Sunday)? Why that entry is made without any reasonable cause of love or hate for Anderson, or other motive. Why it should have appeared there at all is as wonderful as the disappearance of the leaf from Brooks's pocket-book, which no eye could discover. Bryan's tongue seems as facile as Brooks's. It was this same witness who, the Court will remember, swore that the heads of the three men, when shot, were turned towards the grass piece, and not towards the Holland Bay-road, which the medical evidence proved to be false; yet which Bryan has conveniently modified—now.

This, too, is the same witness who swore that he told of this shooting to Mr. Sinclair on the

the 22nd, who, point blank, denies it. This, too, is the same witness who swore that he told of the shooting to M'Dermott, or that M'Dermott told him so on the 21st or 22nd, when M'Dermott never was there at all. Yet, who, as conveniently as in the case of the flogging of Anderson, now again alters his fictitious tale.

Cecilia Robinson, against whom there was a charge of robbery, and who was arrested and taken before Ensign Cullen—a witness having every motive of revenge against the military, and, as might have been proved, every desire to please her master, Manning—speaks only as of a Saturday in October last year; "about four months ago; it is twelve months ago since."

Abraham Donaldson, another servant of Manning, swears to the 21st October (Saturday); but, then, he is under Manning's control. There is no possible reason assigned for his recollecting that date.

Thomas Clarke swears to a Saturday, but neither to month or year.

Alfred Brooks, whose name will hereafter become by these records as notorious in courts of justice as "Cressia" was in the pages of Shakespeare, will be treated with again by-and-bye.

John Duaney, who describes himself as an illiterate man, who lives at least seven miles off the post-office, is strangely forced to state that he was there when three prisoners were brought; that it was the 21st. It is enough to remember that he, and Manning, and Anderson, were the three who first hinted about this matter before the Commissioners, after the failure at Monklands, and then gave neither dates or names at that early period.

John Anderson, of course, now speaks of the date of the 21st, for he had "a revelation." This man was it appears one of those who, with Manning and others, scattered abroad with fanatical ignorance amongst the lower orders of the population the seeds of rebellion, that grew wide-spread in St. Thomas-in-the-East; one who was flogged as a rebel on 22nd October 1865 by the detachment, in which I was conspicuous as the doctor at Golden Grove.

Eliza Phillips, a former witness, who can neither read or write, speaks only of a Saturday, as to three prisoners coming to the post-office. On this examination she saw nothing done; she never even claimed Hunter as a creole connection.

John Hamilton also speaks of the 21st October 1865, as the day when the prisoners were brought in his presence to the post-office and shot. This is the same individual who was examined in Ensign Cullen's case; yet told then not a word of Brooks, or of 30 prisoners on the 22nd, or of the fate which Brooks held out to others in the supposed presence of the dead bodies of the three men. This is the same witness, too, who never mentioned a word of Brooks, even to those concerned for the prosecution, until the very day before he actually gave his evidence on this occasion, and then only after the Court had adjourned on that day, and not until after Speed and Brooks had been examined, and yet had been for days previously in Kingston. He had been, he says, with Manning and Anderson—aye, and, in all probability, Brooks, whose singularly-remembered evidence had been already given, yet required so much backing up. By what extraordinary chance John Hamilton now appears to have been near the Iron Bridge on the 22nd, or how he came to be at the post-office does not appear.

On the former occasion his plea was a bill for beer, to be rendered fortuitously on an unexpected march from Muirton by a man who does not live near the post-office. This very witness swore as of his own knowledge, on a former occasion, to the names of one or more of the three prisoners. It turned out, as he says, that he was only told of this miles off on the same day at Holland Bay. The credit given to his evidence will somewhat depend on the credit given to Brooks.

Bevis Hunter, who cannot read or write, and who now gives evidence for the first time, speaks only of the 22nd. The credit due to his evidence will depend on the credit given to Brooks. Here, however, is a man who undertakes to swear to the 22nd, and yet cannot tell the day or date that day week before, and who can only tell the 22nd as the day by counting from the beginning of the month, stating that is how he knows. This man, too, was examined after Brooks had given his evidence, and was in Kingston for days together.

Has he mistaken the Tuesday for the Sunday? Was that the day that he was out?

Thomas Wedderburn speaks of seeing three dead bodies on a Saturday, and burying them then, at 11 a.m., and that it was on that day that others helped him; apparently the three prisoners, on a Saturday, were alive till after 12 at noon on Saturday.

Harriett Warren, a former witness, who cannot read or write, speaks of October 22nd, but she cannot now remember the month.

She now says she knows the date from remembrance in her head; formerly she said John Wright, her husband, put the date down, and she saw it before she last gave her evidence; and remembered it because she was going to church that day; and there was no church open that day.

Now, John Wright is the man she lives with. On this inquiry, John Wright is not now vouched as her informant, and recorder of dates and events. It was found that he could not read or write. Now, instead of going to church that day, she finds out she did not go to church at all, because there was no service during martial law at all, one clergyman having been brutally murdered, leaving a widow and helpless children, two others having fled for their lives; one of them having lost by savage murder one of his sons by butchery, and the other by gouging out his eyes, as might have been here proved, and as was proved on the general county commission. This is now an historical fact.

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Zachariah Bayley formerly swore only to a Sunday as the day on which the bodies were buried; he somehow now swears to Sunday the 22nd.

Thomas Brown will come under the same category with Alfred Brooks. He too at first, to use his own words, says: "I never mentioned this story at all, nowhere at all, to any one." Again, he says: "I was summoned to come up and give evidence; I do not know who gave in my name as a witness. Possibly Manning or Brooks might tell. What a glorious prospect it would be for him of a guinea a day to witnesses of this description!

William Bartley says, in his own words: "I cannot tell the day of the week" (personal evidence), "but on a Saturday they kill them." (Hearsay: "He never was present, and we bury them on a Sunday.") Yet for a moment before he could not tell the day of the week. (Hearsay, too, perhaps.) He also assigns as a reason for saying it was Sunday, that the people were coming from church at Golden Grove; old Cyphus Wills told me so. If, as Harriett Warren and others on Ensign Cullen's trial swore, and now swear (and the Court may remember) that during martial law there was no service at all, is it at all probable the day spoken of for the burial was the second or other Sunday, or the 22nd, during martial law? The medical evidence may possibly strengthen this argument.

R. Roden Francis comes forward for the first time; he can neither read or write; he cannot remember the day of the month, or the year; he cannot remember what the day of the month, the Sunday, was before the 22nd! poor tool of more designing men!!

James Sproull, who also comes up for the first time, was doing duty from the 16th to the 22nd. If Brooks did not go to Holland Estate on the Sunday from Golden Grove, and return from Holland Estate to Golden Grove that day, then Bevis Hunter, Francis, Hamilton, Bignall Brown, Speed, and Manning (who singularly enough always come in at the end of the tale to give a helping hand) did not witness on this Sunday, near the Iron Bridge, what they now for the first time pretend they did; is not this a devilish conspiracy, mainly carried out by as shameless perversion of dates, persons, and facts, as ever disgraced the records of any tribunal? and I will presently venture to establish this.

George Grant Manning, the former witness, is the last witness for the prosecution. As to the date of the 21st, and prisoners being brought to the post-office that day, and as to the 22nd, of course he brings up the year; he speaks to the 21st, although, as the members of this Court know, he never mentioned that date or any date at all in March or April 1866; no man better knew than this man the absolutely essential importance of this particular date; the keystone of the whole of this prosecution. How easy for him by accident forsooth, or design, as it were, to inoculate this date in the minds of others, whose memories though fugitive in time, and number, and facts, are yet capable of being perverted to the basest and most devilish uses. This is the man who was an intimate associate of a sect of men who have brought as grievous desolation and woe in a particular locality as ever befel a province of India at the instigation of an Hindoo or a Brahmin; this is the man who, with the flogged rebel Anderson, held secret meetings at Stokes Hall, if not elsewhere, inflaming the passions of an excitable and ignorant people, and setting class against class, creed against creed, colour against colour, under the pretence of philanthropy and religion. Is not he one of those to whom some late members of assembly of high rank in that body spoke in those halls and in vice-regal palaces, and in a war council, as one of those demagogues who went about preaching seditious doctrines, and had brought perils and cold-blooded massacres upon the land? He is by his own oath, or by the oath of others, the man whose shop was, in the height of the rebellion, crowded with stock, preserved; he is the man for whom Ensign Cullen and I, with troops, twice searched and attempted to capture and to take before Captain Hole on the warrant of a magistrate; he is the man who, warned by his copatriot Anderson, fled for his life from this young officer and the troops under him, of whom I was one.

This man is far more educated than the rest; poor misguided creatures; his creatures. This man may have thought that his hour of revenge for these with whom he associated and preached at seditious meetings in St. Thomas-in-the-East, and by whose means that hellish crew was let loose, has come. What keener revenge than to glut on the life-long ruin of the officers from whom he fled for his life. And this is the man of so pure a mind, of such peaceful and holy teaching, so spotless a character, of so saintly a life, as that his evidence and his teachings shall be put forward almost as Gospel truth, and that too in direct conflict with the testimony of soldiers, non-commissioned officers, officers, volunteers, and magistrates.

It surely will not be again hazarded that Manning is not a man wily and intelligent enough to get up a conspiracy, especially as to dates, and to delude others with the same belief as himself, people too of the lower orders in life. See what he has done with Alfred Brooks.

Will the Court but remember as to the recollection of witnesses in this class of life (when not tutored as to dates and facts) the passages in Ensign Cullen's address on the Report of the Royal Commissioners; the evidence in William Gray's case; aye, and above all, your own weary protracted experience, and I dare to ask you, Mr. President and gentlemen, whether you, when honour and life are in jeopardy in this criminal court are satisfied, beyond a reasonable doubt, that any such shooting took place on the 21st October 1865. Is it not a remarkable fact that not a single memorandum or voucher, or piece of evidence, has been produced to verify these two dates, or to corroborate the verbal testimony of the witnesses as to these two dates, and any occurrences then. If John Wright had that memorandum, as his mistress, Harriett Warren, swore on Ensign Cullen's trial, and she had

seen

seen it before she gave her evidence, where is it now? If Samuel Bryan really had any pocket-book showing the dates of the 21st and 22nd, which, the other day, he said he referred to so as to correct his mistake about the day of the flogging of Anderson, where is it now? You had produced before you an old musty, moss-grown, piece of paper as a memorandum of the date of the killing and burial of a man (by word of mouth, not in writing, William Gray), older in date than the 21st and 22nd, preserved too, as it is said, for no special object, and that too by people uneducated; and yet neither from Manning, the post-master, nor Anderson, the preacher, nor Duaney, the lighthouse-keeper, nor Samuel Bryan, the book-keeper, nay, nor from the despatches or documents of the day, is there brought forward a jot of evidence to attest the credibility of the story. Such forgeries would have been far too palpable. The attempt to wrench out statements of admission as made by me, how grossly has it not failed?

By the merest God's chance from Brooks alone (and to his confusion and the dismay of his co-conspirators) has a memorandum of the time been forthcoming; but naught there of these suppositious occurrences of the 21st, nor of his fictitious braveries of the 22nd, notwithstanding even his account.

As to the presence of the witnesses at the time of this shooting, their evidence is not very corroborative of each others presence or of their seeing each other, or of those whom they knew to be Ensign Cullen and myself, whom indeed they never saw before.

Peter Phillips speaks only of Bryan, Colson, and Wills, as bringing prisoners on the day he now speaks of; he does not speak of seeing any other witness on the 22nd, of no officer or doctor at all; he does not identify either Ensign Cullen or myself.

Cyphus Wills speaks of Bryan and Coshee as taking prisoners on the day he alludes to, but does not speak of Ensign Cullen or myself; this time he identifies neither.

George Colson mentions only Bryan and Wills; he speaks of an officer and doctor, but does not identify me.

Robert Speed also mentions Colson and the notorious Brooks as of the next day.

Richard Francis refers only to Bryan and two constables, and nobody else.

Samuel Bryan speaks of a Corporal Beckett, of whom nobody ever heard, as being present on the day in question; he, of course, speaks of Ensign Cullen and myself, and also identifies me, but not a single witness for the prosecution, as being there.

Cecilia Robinson, strange to say, omits any mention whatever of seeing any witness for the prosecution except Bryan on the day prisoners were brought, though she professes to have seen the interment, and that she was present, yet not one of the gravediggers is mentioned.

Abraham G. Donaldson of course speaks of Ensign Cullen and myself, but not of the presence of another witness either on the 21st or 22nd.

Thomas Clarke speaks only of himself, though he says he knew Colson and Bryan.

Alfred Brooks does not speak at all of the 21st.

John Duaney, of course, speaks of Ensign Cullen and Dr. Morris, and Corporal Hunter, but, singularly, of no other witness for the prosecution but Manning, as being present at this time.

John Anderson almost tallies with John Duaney in this respect.

Eliza Phillips speaks only of Hunter, yet nothing of any officer or doctor, and certainly not of the presence of any witness for the prosecution being present when she says she saw Hunter at Manning's shop.

John Hamilton speaks of Bryan, Wills and Colson, Ensign Cullen, myself and Hunter, at Manning's shop, yet not another single witness for the prosecution.

George Manning gives somewhat the same statement as to persons present as Duaney, Anderson and Donaldson, or five persons (not eight or nine, amongst whom were Wedderburn, and afterwards of Brooks).

It is remarkable that he does not attempt to name Bevis Hunter, John Hamilton, Richard Roden Francis or John Sproull, as being with Brooks on that morning.

Is it not a circumstance worthy of the attention of this Court that, in the very second week of martial law, almost in the very teeth of martial law, when it is notorious that the lower orders were all scattered, and were being arrested in all quarters, and flogged, hung, or shot, and in fear of liberty and of life; and when even Manning and Anderson were in jeopardy, no less than 23 persons should thus, for this particular purpose, for particular dates, have been so strangely congregated together from distant places amongst 20 or 30 soldiers crying out, as they say, for prisoners and for blood?

With regard to the utter impossibility of any one in the shop, or under the shed, or in the road, or in or near the kitchen, or at the back of the shop, or even towards the turning of the road, actually seeing, on the 21st, what was taking place at the bamboo rail fence, or only nine paces directly across the road, in the then state of the logwood fence, thick, and at least 12 feet high (in many positions having to look almost along the hedge itself, or through the hedge twice at different places and angles) I would fain trust after all the evidence given by the witnesses for the defence, and uncontradicted by the prosecution, that you, Mr. President and gentlemen, cannot have any doubt; and yet Wills, and Colson, and Bryan, who never went further than the shop, but turned back almost immediately after the delivery of the prisoners, and yet also Hamilton (on the road between the shop and the bridge, if away from the shop at all), Donaldson (if Duaney is to be believed, as well as his own cross-examination), Duaney, Anderson and Manning, (who were all in the shop with the shed between them), venture daringly, in furtherance of this conspiracy, to

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tell, in decisive and exact terms, each and everything that they say took place, from the turning on the Holland Bay-road downwards for at least 80 or 90 yards, with this logwood fence between them, of soldiers with prisoners, the arrangement of the soldiers when firing, and of the three prisoners when fired at by soldiers, 10 to 14; the several droppings of the several heads, one after another, at intervals; the number of four or five separate volleys, guns, and shots, as each fell; the tying one by one, the putting up all together by others, and the taking, loading, and pointing of a rifle by me; of three or four, four or five in one volley at each man, and all this with insurmountable obstacles intervening.

Has not the attempt to deceive and impose arisen because, when Colonel Daniell went down in September 1866, the fence was very different from what it was in October 1865?

It will be remembered that, according to the evidence, there were plenty of people and soldiers between the shop and the bridge.

How, too, could these persons in the shop see all this that they describe as of the self-same momentary occurrence out of the same door or window, especially in the bewilderment in which they are forced to admit that they then were?

They tell you also that there were 10 to 14 soldiers armed, who went down with rifles, loaded at a distance, certainly not 10 paces from the three prisoners, directly opposite to them; the height and width of the logwood fence, and the overreaching of the bamboos on the side on which they stood surely must have effectually prevented the sight of me at that spot, as well as of the soldiers from all such minute inspection at such a distance; besides, what need for me to have taken part with three or four men firing in batches at the prisoners one by one, if each was tied one by one?

Were I to examine more minutely the evidence of each of these witnesses as to men and volleys and guns, I could show you grave contradictions, but, perhaps, I unnecessarily would take up your time; that was clearly shown by the Judge Advocate in Ensign Cullen's case, upon the charge against Ensign Cullen. I only now call your attention to the improbabilities, if not impossibilities, and absurdities. I may, however, add, that though Cecilia Robinson, Thomas Clarke, Eliza Phillips, and Peter Phillips, are put forward as present, they do not attempt to indulge in that horrible detail; the master touch of Manning, the enthusiasm of Anderson, and the bewilderment of Duaney, alone could describe it.

Nor, Mr. President and gentlemen, will I trouble you with any minute detail as to the orders said to have been given by me. One or two witnesses for the prosecution pretended only that Ensign Cullen and I whispered together, and another that I said loose the prisoners, and another that the soldiers said, that I said that the prisoners were to be shot. Such is the evidence of Manning and his more immediate confederates, and yet Peter Phillips, Clarke, and Eliza Phillips, witnesses for the prosecution, said to be present, swear to nothing of the kind.

It is worthy of attention that many of these same witnesses for the prosecution are forced to admit that I was very ill, at least for some time from my arrival at the shop; their own testimony on this point surely renders it highly improbable that I should have so chiefly or at all participated in the acts charged.

The evidence for the prosecution as to Corporal Hunter is so material a portion of the case for the prosecution that I am here forced to comment upon it. Of the several witnesses called for the prosecution who must have seen Hunter (a man well known in that parish and district) if he was there, Phillips, Wills, Colson, (who says the prisoners were delivered to the "officer") Richard Francis and Bryan (who says he delivered the prisoners to Corporal Beckett), Cecilia Robinson, Donaldson, and Clarke (who say soldiers were making the cat), and, strange to say, Manning, who still swears as to somebody ridiculing the prisoners about their prayers, say nothing whatever now of the presence of Hunter at any time when prisoners were brought or shot.

Speed speaks only of Hunter making a cat. Duaney says Hunter loosed the prisoners and returned up the road. Anderson says the constables delivered the prisoners to Hunter, but not so say Colson, Wills, or Bryan. Eliza Phillips speaks of Hunter being present at some day or other, but nothing of Ensign Cullen or myself, at the same time; she also swore that Hunter did nothing with prisoners except box one. Hamilton, for the first time, now pretends that he saw Hunter there, but never as to taking part in any shooting.

There is one witness indeed for the defence, who says Hunter was there for some time on that day, but only until half-past 10 a.m. I would here notice that Manning and others have never pretended to deny that two volunteers did come to Ensign Cullen that day from Lieutenant Adcock, nor has he attempted to deny that he did see and did not tell Mr. Berry anything whatever of the shooting of the three men.

I would here call attention to the word "Fire," sworn to by Manning as the word of command used, and refer to the comment made on the former trial.

Thus far have I closed my comments for the prosecution as to the first day, and whether from the gross exaggeration of the witnesses for the prosecution, or from their solemnly swearing to matters, as to dates, and persons, and facts, of which they can, in reasonable probability, have but little other knowledge than hearsay, or positively can know nothing, I yet trust to show to this Honourable Court such a mass of falsehood as shall indelibly stamp this prosecution with the brand of perjury.

If 10 or 14 soldiers, armed with Enfield rifles, fired at three men, one by one, or three together, and that successive volleys were fired by four to five men at the same moment, on the 21st, what would the Court expect to find, and what marks were said by the prosecution to be found at 10 a.m. on the 22nd?

Peter

Peter Phillips describes the three thus, in respect of these several injuries:—One had his eye knocked out, one had a hole in his skull, the third had a wound in his stomach and this was all he saw. So, therefore, according to his account, only one man's skull was injured, and that too with only one hole, out of which marrow was coming (as if that was probable for brains or brainy matter).

Cyphus Wills says, on this Sunday their hands were tied behind their backs to the bamboo draw rail, with their heads hanging down, but gives no other description.

Robert Speed says the bodies all swelled up, but he only peeped at them (he never knew the names of the men).

Samuel Bryan pretends to say he saw all the heads smashed, and the brains running out of them. Strange to say he places his hands in front of his body, and the heads, in explaining what he said he saw. (Compare this with Wills' account.)

One skull produced is wholly uninjured, two are in fragments.

Cecelia Robinson says she saw the three of them tied separate, and one head bent down (Richard Walters). "I saw" (says this witness, speaking of what she saw herself) "the brains smashed up, the head smashed up; I saw nothing more;" one head again only injured. (Compare her statement with that of Wills and Bryan.)

Alfred Brooks says, that there was no smell whatever, and no signs of decomposition; speaks only as to seeing one man wounded in the skull, and saw no other wounds (although he pretends he made a close inspection); this witness says he was Richard Watson, he was the tallest of the three; and yet the skull of the tallest man of the three is fitted by Dr. Kerr and others to the bones of the tallest man; has not a single wound while the others are all broken into fragments; the one point of entrance in each capable but of one ball, when the pieces were finally put together by Doctors Bowerbank, Campbell, and Anderson, and Dr. Kerr.

Harriett Warren describes one skull smashed, one wound on the side and nothing of the rest. She, too, says that it was Richard Walton who had the wound in his belly, and not his head smashed (compare this with Brooks).

Zachariah Bailey says, one of the men's brains was over his face, and the other two had blood. Were then the three skulls injured?

Brown, again, only speaks of one man as having his skull injured, and his brains running out.

William Bartley alone speaks of a chop on Tommy Miles.

Bignall, who pretends to have been there, only speaks of the eye of one being partly out, nothing else.

Can the Court possibly expect that only such injuries as are here described to have been on the 22nd, on these skulls, perfect in the whole except the two holes, one in each skull, would have been all the mischief done, if really fired at on the preceding day, as described by the witnesses for the prosecution; can it believe that only one ball could have hit each body at all?

If that be so, what becomes of the testimony of those who swore to these three men being killed on the 21st?

What becomes of the testimony of the witnesses of the 21st and 22nd too, if it be found that the skulls produced do not accord with the testimony of either set of witnesses; and yet, while the three skulls are said to be found perfect as skulls but for the two holes on the 22nd, two skulls in the supposed grave, with all their sutures separated, one in minute fragments, while the other one is perfectly whole. Again, when the skulls produced show such enormously extensive injuries, what is to be said of the testimony of those who speak as to one or two holes only?

Nor can I omit to call to your notice the contradiction of the witnesses, some of whom state that two of the bodies were buried with their heads towards the post-office and the other head towards Holland Bay, while others state that the three heads were together, though one of them was a little above, or below the other two; and yet, more, the grave spoken of is only about nine or ten feet from the bamboo rail, while Zachariah Bailey says, he dug the hole half a chain, that is to say, 33 feet from the bamboo rail.

How can all this loose and contradictory evidence be reasonably satisfactory to the minds of this Honourable Court? There can be no doubt that certain facts are outrageously sworn to, but let the several matters be thoroughly sifted, and compared with each other, witness with witness, and evidence with evidence, and the whole structure will fall to pieces like a baseless fabric.

I have received the testimony of the person called Alfred Brooks, the discharged book-keeper, the man of whom nothing good is known, whose word is not believed, who concocts the most improbable and the grossest tale ever heard of, whose own handwriting and memoranda, no less than the testimony of his brother volunteers, proclaim him a liar and perjurer, in this Court of Justice! Fit helper, indeed, for such men as Manning and Anderson.

If it be true that Brooks never left Golden Grove on Sunday the 22nd, it necessarily follows that the testimony of John Hamilton, Bevis Hunter, Bignall, Francis Brown, and indeed of Manning, who swore now for the first time that they saw Brooks near the post-office, and Iron Bridge, on Sunday morning the 22nd, are almost equally incredible. Take the first piece of Brooks' evidence, that he, on close inspection, saw only one man's head, and the tallest man's, smashed to pieces; and take the evidence of Doctors Kerr, Bowerbank, and Anderson, as to the state of that skull so fitted to the tallest man of the three; and

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Brooks' testimony is false, that skull had no fracture at all. Imagine his extraordinary tale: according to his own report he gets up and, contrary to discipline, and ordinary precaution, and his usual slothfulness, goes out alone at a quarter or half-past seven, at the direction, he says, of Lieutenant Adcock and Captain Ford, who he well knows are off the island; he proceeds all the way, he says, alone on the very road towards the Iron Bridge; he goes on to Holland Bay, there, he says, he gets hold of a constable, captures one or two prisoners; he proceeds on to Holland Bay Estate to the negro houses, about two or three miles off; he goes, he says, from house to house about; he takes altogether, as he says, about 30 prisoners; he himself apparently has no arms; there are, it would seem, no handcuffs, and all these prisoners, with abundant opportunities of resisting, or running away into the bushes at Holland Estate, and on the road, quietly, he says, suffer themselves to be peaceably taken by a lame-foot man, and one or two others, and an unarmed youth, in time of martial law, without the aid, too, of a single volunteer or soldier, to be taken all the way to the Iron Bridge, and then, as he says, they permit him to go out of his way and to amuse himself by sneering and jeering at them, these alleged prisoners under his charge, and foretelling them their fate, and threatening their lives when they reach Golden Grove quarters, and get amongst infuriated soldiers; he actually says, too, that he stopped at Manning's, he stopped and gave them some water; with one breath he says he mercifully appeases their thirst, with the next breath he vindictively warns them of their fate of being shot like their fellow labourers.

Well, he comes with all these prisoners, he says, back to Golden Grove by a quarter past 10 o'clock a.m.; and all this is done, as he positively swears, within the three hours; and to cap his swearing by something more extraordinary still, he wishes this Court to believe that he then delivered his prisoners to Lieutenant Adcock and Captain Ford at a quarter past 10 a.m., in the morning at Golden Grove, personally. Had he not been ill in bed the whole time, that abominable lie might have been avoided, and he might have saved himself from that perjury being found out, and he might have known that Captain Adcock and Captain Ford had left Golden Grove that morning about 7 a.m., and would not return until half-past 4 p.m. How one lie leads to another; his own written memoranda are found; fortunately, though they tell everything else, they tell there of no such exploit as 30 persons being taken prisoners on that Sunday morning, brought in by him; though he had that book in his room, and under his pillow for several days afterwards at Golden Grove, till he was discharged. He is recalled to explain this book, and to swear to his own handwriting; after careful examination of the two pages down to the 21st, with his own signature, all in pencil, it comes across him that there is nothing to confirm his statements as to the 22nd; the ready lie comes up to back up his other lies, and he swears on his oath that one leaf coming in just after the page on which the 21st is entered, had been torn out. Anticipating exposure, he resorts to another lie; having in one breath stated that the two pages were in his handwriting and the name also (for most assuredly he did swear that), he turns round and swears that that part of the writing on the second page as to his own doings of the 21st, and his own signature, are not his handwriting. The Court will notice that in this diary all the printed days follow on each page in their due consecutive order, day after day, and that there cannot possibly be any missing leaf immediately after the two pages in pencil.

The man's very countenance betrayed his perjury. No wonder, that, contemplating the shocking perjury he was about to resort to, he for whom the Court had been adjourned on the preceding day till the following morning, shrunk and quailed at presenting himself, till a serjeant and policeman brought him into court under pressure; yet more, can the Court now believe this man on his oath when he denied that he was boasting about that he, poor discharged book-keeper, the poor outcast from place, was getting a guinea a day for his evidence, and that it was better therefore to be a witness for the prosecution; and yet this is not a tithe of the case against him; this man, who actually ventured to swear that he was not sick on the 21st or 22nd; that Alvarenga never attended him; and that he knew nothing of the nurse Thompson; that he did leave Golden Grove and do all these wonders; and that he never was a discharged book-keeper; and this by letters in his possession.

And now, Mr. President and Gentlemen, let me turn to you the other side of the shield:—What do all those whom Brooks himself at last vouched as witnesses, who, he says, saw him bring in all these prisoners on the 22nd, Sunday. At last, I say, for you will remember how Brooks hesitated to name anyone; at first he did not know them, they were volunteers; then the volunteers became book-keepers; then it was no use mentioning their names, for their attornies and overseers would not let them come; they were wanted for estates' work; it was crop-time. Oh, if they come they might choose to say they did not see me with prisoners that day. Exactly; conscience was guilty; they could not say so. Yes, at last names were mentioned, and, strange too, the names of book-keepers and others not at Golden Grove, some of them not in St. Thomas-in-the-East; but the names were dragged out and they came, the whole; Frank M'Dermott, John Mais, David Ford, Michael Myers, R. J. Stewart, and John Low; and they did swear (his conscience told him would swear), and they did swear to the truth, and not to a lie; they did not perjure themselves, as he did; they swore that he never brought in or handed over a single prisoner that day; they, of his own summoning, swore a little more too; they swore he lied when he said he left Golden Grove, for he was ill in bed, as he knew when he feared to tell their names.

Can you not now, Mr. President and Gentlemen, with perhaps more readiness since these additional features have been disclosed, believe that it was really true that no shooting took place on the 21st, of any three prisoners at or near the post-office. Surely the soldiers, non-

non-commissioned officers, and above all, Ensign Cullen, are more worthy of belief than such men as Manning, Anderson, and Brooks, and those who have been so basely subservient to them.

You, Mr. President, said you would sit here six months to hear me. Have patience, I ask you, for an hour.

Let me call to your attention a short summary of the evidence in defence.

Serjeant Drysdale (of the Police), was at the post-office on the 21st, from about between 8 and 9 a.m., for about three quarters of an hour; at that time Ensign Cullen and I were there, and Corporal Hunter, the soldiers, and only Manning, Anderson, and Cecilia Robinson. It is clear no prisoners were brought in or shot during this period; it is equally clear that Drysdale met no one on the road being brought in to the post-office, or on his way through Golden Grove, along the road from Duckenfield or Golden Grove to the post-office. Alfred Berry, the volunteer, with Mr. Brandon, another volunteer, was sent on the 21st; on his arrival, probably about 2 p.m., at the post-office, he neither saw or heard of any shooting; he was in conversation with Ensign Cullen; he saw Manning, and was in conversation with him; the witnesses for the prosecution pretend that at least 17 or 18 people were there, with plenty of soldiers, and yet nothing is seen or heard of any persons having been that day, only an hour or so, brought there as prisoners and shot. Is it conceivable that if any such act had taken place but that Berry must have heard of it from some one that day?

Again, Mr. Berry actually went through a gap in the same logwood fence into the same grass piece, opposite Manning's shop, for about 20 yards. Now the Court knows that there are no trees whatever to intercept the view; that the bamboo rail across this grass piece is perfectly open, the rails being in line at least two feet from each other, and the grass quite low. It may well believe that as Berry was going straight from the road, through the logwood fence some distance into this grass piece, in a line to the bamboo draw rail so perfectly exposed, he must even involuntarily have seen these three dead bodies if they had been there then. Why, surely he, inside, had a thousand times better means of seeing everything than any man outside the logwood fence, or in Manning's shop.

There is every human probability whatever that Berry must have seen these bodies, if even they were there then, if he was inside the grass piece, as he swears he was.

Now, from about 2 p.m. to half-past 3, he remained at or near this post-office and the grass piece; it is pretended that the prisoners were brought in and shot between 11 a.m. and 1 p.m.

It surely is perfectly incredible that these bodies should have then been there lying dead (and this during only the second week of martial law), and that Berry, with orders to keep a strict look-out, and in conversation on the spot, should not have seen or heard of these deaths. Why it must have been the talk of the day; Ensign Cullen, or Manning, or some one would certainly have told him of it had it occurred. That Berry was sent on is abundantly clear from the testimony of Captain Astwood, Ensign Cullen, Wolstenholme and others. These are the only two civilian witnesses whom it has been possible for me to call; Volunteer Brandon being throughout both these inquiries, and before they commenced, absent from this island.

Hear what the military witnesses say:

Ensign Cullen, who swore on oath before the Royal Commissioners that no such shooting had taken place on that day, was examined again before you, and he swore most positively that no prisoners were brought in to the post-office that Saturday, that none were shot, and that I never moved out of the post-office that day from my arrival up to the time he left with me for Golden Grove; that I gave no order, that I could not possibly have shot anyone that day without his knowledge, and that I did not.

Ensign Cullen states, that I got ill on the way from Muirton, about a mile from the post-office, and was much worse when I got to the post-office, and was brought and put on a table, and then in a small room; that I had an orderly, a soldier, to attend me; that I remained in the post-office, lying down on my back; that I did not go out that day; that he applied to Manning for a conveyance for me; that eventually I started on horseback for Golden Grove; that I was very ill when I got to Golden Grove that day. Corporal Hunter, who was at the post-office that day till about half-past 10 o'clock, if not later, swears that I fell ill on the road coming from Muirton, and that he left me ill in Manning's shop, and that up to the time he remained, there were no prisoners brought in or shot that day.

Allan Maddix (one of the detachment at the post-office that day) swears that he attended me the whole time; and that I never left the shop that day, from the time I came in until the time I left for Golden Grove; and that no prisoners were brought in and shot; that he is quite sure that neither he or I left the room at all, all the time, except that we went to the door.

Now, Maddix remained the whole day at the post-office himself, from the time of his arrival to the time of departure.

Lewis O'Connor, of the same body of men at the post-office, states, that he was nearly all the time sitting down at the post-office, in front of the door, and that I never left the room all the time; and that no prisoners were brought in or shot; he too remained behind with Ensign Cullen.

Fielding Wolstenholme (then serjeant-major with the detachment, on the 21st), swears that he was at the post-office, and remained with Ensign Cullen; that he neither saw or

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heard of any prisoners being brought in or shot that day; and that I was ill in a room adjacent to the post-office, lying down while he walking up and down about the street.

Morris Gordon (a private, who was also with the detachment, on the 21st) swears that he never shot or saw any one shot at the post-office in his presence that day, and that he was in the shop the whole time.

He was also one of those who remained behind with Ensign Cullen at the post-office.

Private Blythe (one also of the same detachment who remained with Ensign Cullen) neither saw or heard of prisoners being brought or shot near the post-office, or Iron Bridge; and states, that I was in Manning's room the whole time. He states, also, that only Manning and a brown man were there when he arrived.

Private Leslie (one also of the same detachment), swore that no prisoners were brought to the post-office, or shot, that day; he remained with Ensign Cullen there. He further states, that I was ill and lying down in a little room all the time they were at the post-office, and that I got ill before I arrived.

Whatever doubts he may have about Corporal Hunter not going on before the rest with an advanced guard, he certainly has none about prisoners not being brought or shot that day anywhere near the post-office or Iron Bridge, or about my illness; he, it is evident, remained behind with Ensign Cullen.

He also states, that while at the post-office he saw no stranger, except the person who kept the post-office; none of the other witnesses.

I would, in confirmation of this evidence, call your attention to the fact, on the arrival of the detachment at Golden Grove on the 21st, we saw all who were there; conversation as to what occurred on the line of march that day was freely entered into before and after dinner, and next day; each man, even Alfred Brooks, was then recording his exploits on that day; and yet, if you believe Ensign Cullen, Captain Astwood, Mr. Chisholm, and others, nothing whatever of the shooting of any man on the 21st, on that march, seems ever to have been bruited about, or boasted of, and I may surely pointedly refer you to the remarks made of Ensign Cullen and the very forcible observations of the Judge Advocate on this point; remarks which apply to me as well as to Ensign Cullen. Did the three soldiers conceal from Captain Hole their plunderings upon their return?

Did Captain Hole conceal, from his despatch of the 19th, the atrocities of the three men; did he not rather then think and state that they did good service? You have heard, too, from the evidence of Captain Astwood, Mr. Chisholm, and Mr. Sinclair, as well as Ensign Cullen, how very ill I came in, and was that night and the next day, over at the quarters at the great house; Mr. Chisholm giving up his own bed to me. What stronger proof of probabilities can be furnished than these two undoubted facts. Occurrences, mark you, at the very time in question, and (to use language already adopted) every man boasting what he had done, although all that he had done, was but his duty to the Colony and to the Queen.

With your generous forbearance, Mr. President and Gentlemen, I will now deal with the evidence as it affects Corporal Hunter, for though, as truly remarked in the address of the Judge Advocate, the proof of his absence or presence can in no wise whatever affect the main facts of the case (as testified to by every single witness in defence, whether as on the 21st or 22nd), it will yet be of damaging effect to the case for the prosecution if I show you (now that the point has, since the last trial, been more fully investigated), that Corporal Hunter did not remain at the post-office the whole time, and take part in the custody and shooting of any prisoners as stated (not by Peter Phillips or by Cyphus Wills, or by Colson, or Francis, or Bryan, or Cecilia Robinson, or Donaldson, or Clarke, or even by Manning, as present on the 21st October, the Saturday; but only by Speed, Duaney, Anderson, Eliza Phillips, and now, for the first time, by Hamilton; and yet all that Speed says was, that Hunter was making a cat. Donaldson, however, says, that the soldiers were making this cat.

Duaney says, Hunter loosed prisoners and returned up the road after prisoners were shot.

Anderson says, the prisoners were delivered to Hunter.

Now Bryan swore (as I have already called your attention to the fact) he delivered the prisoners to Corporal Beckett, and never mentioned the name of Hunter.

Wills and Colson say, the prisoners were delivered to the officers and soldiers, and not a word of Hunter is there from them.

Eliza Phillips, who spoke of no officer whatever as being at the post-office (and, pray mark this, of no particular Saturday at all), says Hunter took the prisoners and boxed one; but she speaks perhaps of some other Saturday or other day, if she did not see anything done with prisoners. Though she was there the whole time about the shop or kitchen, she is not able to swear any prisoners were shot, or that she ever heard the report of any volleys of guns, or report of a gun at all. Hamilton certainly says Hunter was present there that day, and so he was; but Hamilton does not venture to swear that Hunter ever took part in the shooting of any prisoners, or was seen returning after prisoners were shot. The only man who ventures to swear to that is Duaney. How is it that not one of the witnesses for the prosecution with the same opportunities, of knowing and seeing Hunter, who was no stranger at all, do not venture now to corroborate Duaney? From what was known of the last trial, it was abundantly manifest, that two points of the case, which started up after all the volunteers, and all the overseers and bookkeepers had been examined and left, would, in all probability, be made much of on this occasion. If Hunter had lied at the last trial, in attempting to prove his alibi by his fellow soldiers (for by his officer, Ensign Cullen, whose lips were sealed, or by me on account of my illness in the room, he did not prove any such fact);

fact), how was it that none of the witnesses have been examined more searchingly on that point: how is it that, if Hunter had lied, the proof in this case about him is so much weaker than it was then. No attempt now to unfold any horrible details of brains, or a sword covered with brains, or of savage fiendish expression of satisfaction and glee over the blood and brains of men said to have been massacred.

But, Mr. President and Gentlemen, at whatever hour exactly Corporal Hunter did leave the post-office on that day, he must have left it before any prisoners were brought or shot, if ever brought or shot; possibly some Corporal Beckett of some other march (for he does not appear to have been in this detachment) may have been the real Hunter, if Bryan swears at all truly. Taking, then, the negative testimony of so many of the witnesses for the prosecution, and the contradiction of those who speak somewhat of Hunter, does even Private Leslie positively state that no advanced guard went on; he certainly does not; he states he went to bathe about half-past 10 a.m., and when he returned, he saw Corporal Hunter still at the post-office, or under the tree. Now, he does say that Corporal Hunter was sent in front, and that when they fell in to go away, Corporal Hunter was far on in front. There is nothing so positive in this evidence as to induce the Court to believe that no advance guard was sent on, and that Corporal Hunter may not have gone on long before any prisoners were brought. It is observable, too, that though volunteers and others came to the post-office that day, Leslie did not see them. As he speaks indefinitely of Hunter, may it not be true, even on his evidence, that though Hunter did not go immediately he was ordered to go, he did go from the post-office, and was at Golden Grove before 12 at noon that day. Surely, the positive evidence of Ensign Cullen, of Serjeant Wolstenholm, of Corporal Hunter himself, of Corporal Maddix, of Morris Gordon, of George Blythe, may well establish the fact, that there was an advance guard sent on; that Corporal Hunter was at the head of it; that he did with other men leave the post-office, and go in the direction of Golden Grove, and that certainly before 11 a.m. or 12 at noon. But if corroboration were wanted of the fact, one only need refer to the testimony of Cruickshanks, the head carpenter, who was in charge of the rations and quarters, and says that in the morning, in the early part, after nine (though he did not note the hour), and about two hours before the main body came in, he did see Corporal Hunter, whom he had known from childhood, come there with others, and remain there.

Fanny Thompson also swears, that Corporal Hunter was at the big-house when she arrived, and Mr. Sinclair states, that on his arrival, on the 21st, he found Corporal Hunter at Golden Grove quarters, and that Hunter came and complained to him that he and his men had been there from morning and had nothing to eat; and that he himself saw other black soldiers there with Corporal Hunter. Ensign Cullen gave the order, and his reasons.

Ensign Cullen saw him start certainly before 11 or 12; Ensign Cullen swore he did not see Hunter return that day to the post-office.

I would here remark, that doubtless it will be urged that Hunter swore, that on his arrival at Golden Grove on the 21st, he saw soldiers of the 6th and volunteers there; this may be, and is perfectly true, if he was speaking of Lieutenant Adcock's detachment, when it afterwards arrived at two p.m. with Mr. Sinclair; and yet he may still have been there before they arrived, as sworn to by Cruickshanks, Thompson, and Sinclair.

But again it was sworn that these bodies were lying at the bamboo draw rail at 10 a.m. and on to 11 a.m., and Zachariah Bayley (who came with the rest, as he says), marks the hour as 11 a.m. of this Sunday when he said he saw them there, and proceeded to dig; because he says Cyphus Wills told him (rightly or wrongly) he was coming from Golden Grove church. The grave-diggers, by the way, say the sun was high up, and they, eight or nine, dug the grave; two of them say they dug it three or four feet deep, giving the measurements by the height on their bodies. Dr. Kerr, however, says the grave opened on the 26th September 1866 measured only 18 inches in depth. If neither Dr. Kerr nor the grave-diggers were wrong, it is manifest that these bones are not the bones of any supposed bodies buried on the 22nd October 1865, the more so if this hole of the 22nd was dug 33 feet from the bamboo rail.

Now, even according to Manning and Donaldson, it is certain that the body of volunteers under Captain Adcock, and Captains Astwood and Ford, with soldiers and volunteers, came by the post-office on that Sunday morning, the 22nd, at about 7 a.m.; certainly, according to Donaldson, before Zachariah Bayley, Wedderburnd, and other supposed grave-diggers came at all. No information whatever was given then about any dead bodies, though Manning himself spoke to Captain Ford (whom he says he did not choose to tell) and others; soldiers stopped behind at the shop and talked with him, while the rest went on, and yet no complaint or information of any kind is proven; there is no request for burial, or order for burial, as stated in Billy Gray's case; Mr. Harrison looks well into the same grass-piece from a high horse, from a point which would give him view of any bodies directly opposite, yet he sees none.

It is evident, by the clearest proof, by the evidence of Mr. Harrison, Captain Astwood, Mr. Fowles, and others, that at the time there was no appearance or sign of any dead bodies at all, and that no persons about to dig that grave had come to the iron bridge or post-office, or were coming from the direction of Amity Hall, along the open road (for by a public highway it was they said they came); the whole country was clearly visible for miles of road; the body stopped too near to the Amity Hall works, and burnt a building, and no labourer was to be seen anywhere.

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But, in the meantime, and before the troops on that detachment had passed over the iron bridge, three or four men of the 6th (one is dead, one is at Mandeville, and two being Bedford and Cox) went 200 to 300 yards down the Holland Bay-road; down so far too, that when they returned the main body had reached the first village, where a house was being burnt; passed that bamboo draw rail, but not a vestige of any three bodies was to be seen alive or dead, at or near any bamboo draw rail at all, even though, had they been there, the men must have been within two or three feet of them at this exposed rail of about 10 feet wide. One of these men, Cox, has been again, in December, down to that very spot, which he himself described in his evidence on Ensign Cullen's case; he then examined the very place itself where these bodies are said to have been lying. He, therefore, can have made no mistake. Nor is that all. The court has the testimony of Lieutenant Brass, who rode slowly and watchfully with volunteers Davis, Allen (now off the island), Watson, and others.

Lieutenant Brass says:—There were several members of the troop who went with me on that (Holland Bay) road on Sunday the 22nd September; Allen, Private Watson, and others, whose names I cannot recollect.

I cannot say what was the cause of the mistake; I heard some one shouting, calling to turn back, and I did (Harrison amongst others, of course); Captain Adcock and Captain Astwood were near the party.

I rode opposite the second file on the left.

Private Watson was one file in advance of me; I did not see or hear of any dead bodies; I saw no persons with hoes or pickaxes; I saw no crows.

I first heard of the shooting of these men when I returned from England in July.

Clear is it that Lieutenant Brass did go down the Holland Bay-road that Sunday morning, and that he had every opportunity of seeing or hearing of these bodies. If they were there he must, in all human probability, have seen them.

The evidence of Mr. Watson needs no comment; his testimony is worth more than that of a thousand grave-diggers; he knows the Holland Bay-road; he was there on the very identical road on the Sunday, the 22nd, with Lieutenant Brass and others; so swear Mr. Harrison and Captain Astwood, Lieutenant Brass, and Mr. Berry. Mr. Watson speaks to about 7 or 8 a.m. in the morning; certainly before any grave-diggers came; he and others did certainly make the mistake of going on this wrong road. He swears that he went down 250 yards on that same morning; that he took notice then (he was in front on the right hand next to the logwood fence), that very morning as he was going down the road on a walk, on horseback; he had every opportunity on his immediate return of again seeing the bamboo rail; he swears that there were there no dead bodies whatever on those rails. As he returned last he had every opportunity of confirming his previous impressions; he states he has been on that Holland Bay-road very frequently, and that he has no doubt whatever that that was the Holland Bay-road that he went down that Sunday morning.

He, to the court, answered that he had seen the spot out of which the skeletons were in that grass piece very near to the bamboo draw rail on the Holland Bay-road.

Mr. President and Gentlemen, what more conclusive proof can be wanting than the testimony of Mr. Harrison, Mr. Astwood, Mr. Brass, and Mr. Watson, Privates Bedford and Cox; their statements are in no way contradicted or impugned by the grave-diggers, even supposing that Bailey and others did come there on a Sunday; their statements do, indeed, give the lie to Manning, Anderson, Duaney, and others, who have, for the prosecution, sworn, and induced others to swear, as to the shooting on the 21st. Their statements speak volumes in favour of the testimony of Ensign Cullen, and the non-commissioned officers and privates, and Volunteer Berry, as to the truthfulness of the evidence in defence as regards the 21st, and my conduct that night, and of the evidence which Ensign Cullen and the soldiers and I gave before the Royal Commissioners.

If the evidence of the grave-diggers be true, it does not follow that it establishes the truth of the testimony of the witnesses for the prosecution on the 21st. Who informed these grave-diggers about some men lying dead on that road? Not Manning nor Manning's people on the 21st; not Manning or Manning's people on the 22nd. Zachariah Bayley, who brought, as he says, the grave-diggers at 11 a.m. on Sunday, says that the information that led him at Amity Hall to come to the iron bridge was from two black soldiers from that the direction of the iron bridge. If three or any men were killed; if that Sunday be really the 22nd October 1865, may not some men have been killed on that day by those two black soldiers, and found on that road after Lieutenant Adcock's troops, with volunteers and soldiers, had all gone by; and may not a wrong grave in that old graveyard been opened and thereout taken these old bones, simply because there were three bodies found there on the 26th September, or searched before the 26th September, so as to be produced to fit Manning's tale of the 21st! Remember, Mr. President and gentlemen, the hole that Zachariah Bayley dug was 33 feet from the bamboo rail; that of 26th September 1866 is not so far. Zachariah Bayley's bodies were buried three or four feet deep; Dr. Kerr's were only buried 18 inches deep. Zachariah Bayley's bodies had their skulls injured by one hole in each of two and the third smashed; Dr. Kerr's bodies have two skulls in fragments and one perfect.

For medical testimony on the part of the prosecution these are the results.

As to bones in excess:—

Drs. Feddes and Scott admit that there are two bones in excess, Nos. 2 and 3 of the three bodies,

bodies, and that these bones in excess may belong to a human body. They state as to No. 1, that it resembles or belongs to the anterior superior spinous process. Unfortunately for that hypothesis none of the anterior superior spinous processes were wanting.

Dr. Scott attempts to fit No. 1 to 4 ilium, but found it not to fit at first. Dr. Kerr most certainly at one time, viz., on the 23rd November 1866, himself showed Nos. 1, 2, and 3 to Dr. Scott as being supernumerary human bones; he now calls No. 1 an anterior superior spinous process; but, as he himself admitted none was wanting, how comes it to fit, if it does? Nos. 2 and 3 he also admits are in excess, or cannot tell what they are. Yet he says no bones are in excess; very much like handling a question, if not a bone! however the Royal College of Surgeons and Physicians may decide on those matters.

As to soils, Dr. Kerr says, candidly enough, "I am not an authority on soils; I never exhumed bones before; I never was present at an exhumation before."

Dr. Fiddes professes no experience; in fact, he was not asked about it, and accordingly gave no evidence.

Dr. Scott learnedly states that considerable depth will produce rapid decomposition, an answer worthy of the Sphinx or the Delphian oracle! Strange to say, his experience in soils consisted only of the exhumation of one body years ago, buried without coffin for only three weeks, and of sundry limbs, possibly cut off in the hospital, and diseased!!

As to the length of interment:—

Dr. Kerr, while cautiously saying he had no cause to show why these bones should have been any longer in the ground than for 12 months, yet incautiously admits that though hair lasts for years after death, he cannot say why these bones had none if they were buried only 12 months. He also expresses his astonishment at all the clothing and 146 bones being gone in only 12 months, and says he cannot account for it, if the interment was only of 12 months.

Dr. Scott, beyond mere generalities, can tell nothing; of course, as a witness, he must make some answer; and what he does say shows he had no experience whatever, except the body that years ago he found three months buried with all the clothes on, and some of the diseased limbs that he operated upon in the public hospital!

Dr. Fiddes candidly states thus: "I cannot positively state the length of time these bones have been in the ground;" and that he has no inferences to draw as to some bones being longer buried than others; and then he begins to theorise, and to quote Orfila, whose works he has evidently, according to evidence, not read recently, for he says Orfila only wrote on soils in France, and accuses Orfila of much that poor Orfila never wrote, at least while he was alive. He, however, states that he has exhumed seven human bodies buried from three to four months, but never so long as six months, in this parish; with or without coffins, cholera bodies, or not—he says not.

As to gun-shot wounds—

Dr. Kerr never saw a conical bullet wound in his life beyond one, and that might have been, and was most probably, a case of suicide.

At any rate he states thus: "I cannot swear that those injuries were inflicted during life by conical bullet."

Dr. Fiddes, to use his own language, says: "I have had very little practical experience of gun-shot wounds. My own experience is chiefly confined to wounds made with a spherical ball."

Not one single question was asked of these three gentlemen, whether or not the fractures they saw could have been caused after death.

Was the evidence given on Ensign Cullen's trial in this respect a matter of dread?

Now the testimony of Dr. Bowerbank, Manners, and Anderson, and of Staff Surgeons Dunlop and Street, and my own, on Ensign Cullen's trial, must be well known to this honourable Court. Dr. Dunlop was unavoidably absent, and Dr. Street is absent from the island.

The general results which those distinguished gentlemen arrived at have not, I would submit, been shaken. Still is there the same result in the interment of the bones for a longer period than 11 months and four days, and of some of them for a longer period than others; the absence of all hair, clothing, smell, flesh, ligaments, even dust of ligaments, and of all soiling in the boxes, and the unaccountable absence of 146 bones, and also the presence of at least two more bones than are requisite for three complete bodies.

Unimpeached, too, is the testimony that these injuries may have been inflicted by other means than a conical ball. Wholly uncontradicted, too, is the evidence that these injuries on the skull may have been inflicted after death.

But there is evidence before the Court, by which you, Mr. President and Gentlemen, can yourselves judge of the reasonable probability that the bones produced for these three bodies were longer in the ground than 11 months and four days.

The bodies in question were said to have been shot on the 21st October 1865, buried in a brick mould soil, tending downwards to sand, about three feet deep, without coffin. You have a description of the result above, and in Dr. Kerr's testimony of what he found, or did not find on the exhumation, at the very brink of the grave. Mr. Hire's body was buried in a very similar soil, if not precisely the same, not only in the same parish, but in the same district, within a mile or two, on a hill certainly, but in a level garden at a depth not more than nine to 16 inches. He was killed at night on the 12th October 1865, and buried on or

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about the 13th or 14th October 1865; his remains were not exhumed till January 1867; on his exhumation he was found without coffin; with all the clothing he had upon him when he was murdered, visible and preserved; his whiskers were perfect; his head had not much hair when dead, for it had little or not much when alive. The body was very offensive at the time of exhumation.

The man Jones was hung, and was buried on or about the 25th October 1865, in soil very similar, indeed if not the same as that in which these three bodies are said to have been buried, and at about the same depth, and without coffin; and it was exhumed in November 1866. His hair, his clothing, and the mark in it, and the rope, were all found in good preservation; so too were his bones, even the small ones, his brains, and his whole body; the smell too was very offensive indeed at and after the time of exhumation.

Contrast these two last cases with that of the three men, and then, Mr. President and Gentlemen, may I not confidently ask you to judge for yourselves whether in weighing the scale of criminal justice the balance of probabilities as to a longer interment than 12 months ought not to be in favour of the opinions of the witnesses for the defence, ought not to lean for the prisoner, entitled, as he is, to every reasonable doubt in any portion of the case.

Mr. President and Gentlemen, you cannot have failed to have noticed the fact, that the rumour of the deaths of these three men never was bruited about until the report of the holding of a Royal Commission, or almost at its close, notwithstanding the efforts made by the Royal Commission themselves, and above all, by those whose special mission was not to do justice, but to foist themselves into importance by pretentious philanthropy, and to hold themselves out as the special patrons of the peasantry against the so-called dominant class; reckless whether they set class against class, or colour against colour. Not a single witness came forward to tell this tale till after the failure at Monklands before Mr. Maule against poor Colonel Hobbs, and then first it came from Manning.

Mr. Harrison, Mr. Chisholm, Mr. Sinclair, overseers in the Plantain Garden River District, and their several book-keepers and employers, never heard of all this until April 1866.

Mr. President and Gentlemen, with regard to that portion of these charges which accuse me of wanton conduct, I would remind you that not mere illegality, not mere mistake, not mere cruelty, nay, nor any breach of the formalities and laws of peace, or of civil or military tribunals, can satisfy the exigencies which, though even as a shield, the act of indemnity and military law in time of war have raised up to protect the *bna fides* of any officer.

The charge must be proved as laid. To what piece of evidence in the whole of the prosecution can the prosecutor point, undoubtedly demonstrating malice, revenge, or lust of blood, or thirst for human life. Surely Colonel Daniell cannot really mean that the evidence proves any such wanton desire for the cool-blooded massacre of one's fellow creatures.

Even on a charge of murder, malice is essential. What aught else are these charges?

Mr. President and Gentlemen, you have already had drawn to your attention the remarks of the Royal Commissioners and their unfortunately painful impression of the character of the testimony of witnesses of the lower orders; you yourselves must now be aware of their but too ready tendencies to aggravate and horrify the scenes and occurrences of martial law; of their incentives to revenge; you have heard how and by whom their passions were goaded on, and their ill-will concentrated against all those who had taken any part in quelling the rebellion.

You have heard how, and by whom, and under what circumstances these charges were first mooted and fostered, till hearing became seeing, and the grossest improbabilities became the gravest facts. You have heard that these prosecutions are instituted, not so much because of wanton excess, as because of a desire for the honour of the service, even, perhaps, as I may feel it, at the peril of junior members of the service.

Well, be it so.

Ensign Cullen has nobly undergone his scrutiny; why should I not do likewise?

I solemnly assure you that rather more for the honour of the service than for my own personal gain or wish, have I endured, almost in agony, this trial. I have not the means, or power, or influence of the prosecutor. I am ruined in health; I am ruined in prospects.

The mercy and spirit of strangers has enabled me to take the stand I have, and that stand for the service.

In fighting that battle, I have urged on you every reasonable argument, every possible testimony of witnesses of all ranks of life in this colony, who, aspiring to the same noble and generous ideas and sympathies that rouse the hearts of Englishmen against oppression and wrong, and knowing far more of the colony than you, Mr. President and Gentlemen, (and I say this with the profoundest respect) can possibly know, have come forward as never yet men came forward to maintain the truth, and the reputation, and the fair name of Her Majesty's officers.

To them, above all others, I, the army and navy, owe an eternal debt of gratitude, and I cannot help here recording it.

I have no more to add, but with my last words I state solemnly I am innocent of these charges. Do unto me as you would be done by. Whatever may be the result, I shall, Mr. President and Gentlemen, ever warmly thank you, and look back with the liveliest heart-felt satisfaction at the fair trial which, with the assistance of Captain M'Lean, the Judge Advocate, you have so impartially allowed me.

Henry Morris, Staff Assistant Surgeon.

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Prosecutor's Reply.

Mr. President and Gentlemen,

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The prisoner, in the exercise of an undisputed right, has opened his defence by reading an address to you. I do not know how it may seem to others, but to me it appears in no way surprising to find in the position of the prisoner, standing before this Court on his trial for an offence involving the most serious condemnation, the man who could read to the Court so intemperate a paper. It can only be when contumely is mistaken for argument, and assertion accepted as fact, that a defence, foreshadowed by such an opening, can prevail. With vituperation and abuse it abounds, of logic it is wholly barren; nor is it the least objectionable feature in the document that its assertions are wholly unfounded, for there has not been given before this Court one word of evidence, either in the case for the prosecution or the defence, by which the denunciation so lavishly heaped on the witnesses for the prosecution can be justified. I think it my duty to make a few remarks on some of the leading points of this address. It is to me the most relieving consideration at the close of this painful inquiry that the course which the prisoner suggests as one which I ought to have taken did not appear to me to fall within the scope of my duty, and not less to you than to me must it seem, that the policy by which Her Majesty's Government was actuated in sending this Court direct from England to sift the truth concerning the death of Walton, Miles and M'Call, was the express desire and acknowledged wisdom of keeping the inquiry free from Colonial prejudices and predilections, from local traditions and reports, such as are to be found "in the records of the Colony, or in the official documents of the several branches of the legislature." It is, in the interests of justice, matter to rejoice at, "that no inquiries as to the state of certain so-called religious associations in Jamaica (those which in England most ignorantly pass for such)" have been made, but that, in accordance with the established rules of judicial inquiry, the charges will be adjudicated according to the evidence which is given before the Court, and, if opinions respecting witnesses are to be encouraged, they will be only such as the Court has been able to form from the conduct of the witness before it, or from such direct legal evidence given to the Court as the law allows in such cases. Judged, then, according to this rule, where is the evidence given before this Court to support the assertion, or from which the Court can infer that any one of the witnesses for the prosecution is "a member of a so-called religious association;" that any is a "sanctimonious, hypocritical, and designing pretender to, and trader in religion;" where is the word of evidence upon which the Court can safely say that this charge "is the result of a rascally combination to strengthen and to support a conspiracy." That, however, namely, their religious tendencies, with which the prisoner reproaches the most respectable of the witnesses for the prosecution, presents itself to my mind, and, I doubt not, it will also to the Court as especial grounds of recommendation; and while uttering my regret at the perversion of judgment and the want of good taste which portrays as a moral and social deformity a man who endeavours to adorn his life with the beauty of holiness, I may be permitted to express the hope that such feelings are confined to those who have expressed them before this Court, and, for the credit of the Colony, that they are not to be found pervading those records and documents which it was considered desirable that I should have consulted.

It is suggested that the witnesses for the prosecution are not credible, because some of them are sectarians, and a tone of intolerance runs throughout the prisoner's address wholly inconsistent with the spirit of the times. Englishmen live under a free dispensation, and the law, too, by the provisions of which witnesses are sworn and examined in this Court, as in others, has very wisely established the limits within which a witness is admissible, and it is not left to the mere discretion of judges or jurors whether Episcopalians, or Baptists, Methodists, Jews, or Hindoos, can be examined or are to be believed; it is fortunate, therefore, that the value of testimony given to support the charges against the prisoner is not to be determined by factitious considerations of religious belief, but by its intrinsic force, after it has undergone the personal scrutiny of the Court. I think that further word of mine is not required to bring this address of the prisoner under a right consideration, or to uphold the character of the witnesses for the prosecution generally, but it may seem proper, as I progress, to make special remarks on particular witnesses, and to the extent that it shall, I will trouble the Court.

The prisoner, then, Staff Assistant Surgeon Morris, stands before this Court under two charges, for the most wanton destruction of four human lives, which, in all probability, it has ever been the painful duty of any tribunal in modern times to try, or the misfortune of any person to read of. To what extent and by what testimony have these charges been made out? I propose now to give a general account of the case, reserving to a subsequent part of this address, and after I have dealt with the defence, my remarks in detail. The first charge is for shooting a man named Billy Gray, at a place called Grange Hill. To support this, nine witnesses have been examined, namely, John Hamilton, John Steele, Elizabeth Curate, John Curate, William Burk, Ellen Gray, Robert Deacon, Stephen Grant, and Richard Cane. I must open this case by correcting a misapprehension under which the prisoner seems to labour when he says that he "finds it almost only requisite to refer to the grave doubts and contradictions most fairly mentioned by the prosecutor himself regarding the witnesses for the prosecution." I never entertained any doubt, nor am I aware that I suggested any, as to the truthfulness of the witnesses, but I thought it right

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to draw the attention of the Court to the legal bearings of the case, in so far as the charge is for shooting, and the evidence establishes (as it impressed my mind at the time) a case of directing to be shot. But even in that respect I am not prepared to say that I entertain the least doubt, for if, as I have been advised, it has been judicially decided that an individual who directs another to commit a murder, and stands by and sees that murder committed, is guilty of murder, it would seem to be only consistent in principle that an individual who orders another to shoot a man, and stands by and sees that order carried out, having himself first made ineffectual attempts to do it, may legally be found guilty of "ungentlemanlike conduct in shooting the man." In plainer terms, upon the authority of the Queen *v.* Culken, had the prisoner, Staff Assistant Surgeon Morris, been indicted for the murder of Billy Gray, supposing the evidence that he ordered a yellow-skin soldier to shoot Billy Gray, and the yellow-skin soldier did shoot him, and the prisoner stood by and saw it done, he believed he could be legally convicted; and I submit that, supposing you believe the testimony, he can, with equal legality, be convicted on the charge preferred against him.

Now permit me to consider the evidence for the prosecution with you. The first witness examined, John Hamilton, you must have seen, is a very timid man; you must remember that he narrowly escaped being shot along with Billy Gray; is it to be wondered at then that he has a confused, and to some extent mistaken remembrance of the event. He says, "He" (meaning the prisoner) "call to one of the soldiers to give him a rifle; when the soldier bring it, the doctor say, Stop a little, and he cocked the pistol at Wm. Gray, and the pistol go off, and the man fall;" and this is what the prisoner alludes to when he says I expressed doubts. I believe that John Hamilton spoke truly when he said, "Them shot him in martial law; them shot him at a bread-fruit tree at Grange Hill; the doctor, Dr. Morris, call him down, and when him come up to him, him ask Deacon what man is this, and one of the soldiers say, 'One of the Grays'; and as he came up, the doctor tell him that he must stand off, and Gray took off his hat, and say, 'Massa, what I do?' and the doctor say, I don't want any chat, stand off; and him point a pistol at the man five times, and the pistol would not go off;" and that simply from the state of trepidation in which the witness then was, and under which he was still labouring even when before this Court, he made a mistake in the first quoted statement. But are there not other six respectable, apparently truthful witnesses, who have not been impeached in any way (I except always the general denunciation which seems to include every witness I have produced), witnesses who have told a plain unimpassioned story, witnesses (except one, the sister of the deceased) not related to the deceased; and do they not all, the six, agree that the prisoner snapped his revolver four or five times in the face of Billy Gray, and it did not go off; and then he ordered a yellow-skin soldier to shoot him, and the yellow-skin soldier shot Billy Gray with his rifle. Then what is to be said of the evidence of those two respectable men, Stephen Grant and Richard Cane; Grant, who obtained Captain Hole's written permission (which was produced to you). to bury the body. He gets the permission, but being called upon as a constable to look after the property and do duty, he gives the paper to Richard Cane, having first written the name of a person, whose acquaintance he had made, on the back of it in order to remember the name; and the memorandum served another and more useful end, for it enabled Grant to identify the paper when he saw it again for the first time, a day or two before he gave his evidence before this Court, never having seen it in the intermediate time. And can the Court forget how exultingly the prisoner thought he would entrap Stephen Grant, by requiring him then and there to write on another piece of paper, Mr. Andrew William, 5th Regiment, the words he had written on the back of the permit, but Grant did it, and did it successfully, for the handwritings are alike in all respects; is it reasonable then to doubt this man, and wherefore is he to be doubted; and wherefore, too, is any doubt to be cast on Richard Cane, who, having received the order from Grant, undresses and prepares the body of Billy Gray for decent burial, takes off the blood-stained garments, and obtains a full and unmistakeable view of the gunshot wound in the chest of the deceased. Is this, then, not a clear *primâ facie* case; are you to discredit this story simply because the prisoner calls the witnesses hard names? I think I can safely leave this case for the present, and pass on to the next. This charge for shooting Walton, Miles and M'Call, at or near the Iron Suspension Bridge, in St Thomas-in-the-East, is made out without lapse or break, without one missing link in the chain of testimony from beginning to end; by one uninterrupted, clear stream of evidence, flowing from its source; when at Peter Phillips' yard, on the Duckenfield Estate, he gave the fatal, but unintended order, to take the men to the soldiers at the Iron Bridge, to its termination by the hurrying these men to a premature grave; nor yet does it end here, for the earth has rendered back its dead. And by what testimony has this charge been made out? Is it by two or three witnesses; is it by individuals all speaking to the same facts; is it by persons living together and in daily intercourse with each other; is it by people all of the same class and condition of life; does it depend solely upon what they saw, and felt, and handled, and is it by the mouth of living witnesses alone? No; clear and distinct, and unimpeachable (except in so far as he is included in the general denunciation) is the testimony of that old man, Peter Phillips, who, faithful to his trust in the time of peril, remained in charge of the estate when all above him in station had fled; was there to order that, for stealing rum and nails, Walton, Miles, and M'Call and Francis, should be taken to the Iron Bridge to the soldiers to be flogged; and here his testimony ends. It is not an unpardonable digression if I here remark, in the form of interrogatory, and as affecting all the evidence, if this case be, as the prisoner asserts, a huge conspiracy, is it not remarkable that the division of parts should be so frequent, and so distinct, that the actors should be so numerous, and that some of the most intelligent witnesses should play the

the most unimportant parts? Here now, is a very respectable and intelligent man for his station in life; why does not he, if he is lying to please Manning, or anybody else, why does not he tell a good big useful lie; why does he confine himself to giving the order for taking the men as prisoners to the bridge; why does he not go on to say that he too accompanied them and saw them shot? However, to proceed next in order, come three men, Wills, Colson and Bryan, the two first being constables in the capacity of labourers on the Duckenfield Estate, neither being able to read or write; and the last able to read and write, a book-keeper on the estate, in a much higher capacity than the other two, a man having nothing to gain, and everything to lose, by giving offence to the powers he serves. These three men take the prisoners to the bridge, and there, in obedience to orders, deliver them to the soldiers. Now here again, if these men were telling a lie to serve a purpose, a purpose for which they must have been well rewarded in some way, and to carry out which they must have undergone much training, what in the name of reason can be urged why they did not all say that after delivering up the three men, they walked down with them and the soldiers, and saw them, Walton, Miles and M'Call, tied to the bamboo rail and shot; but they don't do that with a degree of truthfulness which commands reliance: one says that after delivering the prisoners to the soldiers, he turned back and only heard the guns; the other, that he, after delivering the prisoners to the soldiers, remained to see the prisoners taken to the bamboo rail, and he only heard the guns; it is only the third who says he remained to see the tragedy out. These four witnesses live at Duckenfield Estate; no evidence whatever has been given to show that they are in daily or weekly, or any sort of communication with the other witnesses; they went their way, and the transaction passed from before them like all the others which happened about that time. Comes next Richard Francis; it does not appear that he lived on the Duckenfield or the Amity Hall Estate; he seems to have been there about the time of the occurrence only casually; he is a very ignorant man, and I am in the judgment of the Court, whether or not I am right in saying, he with a few others, to whom I will refer as I proceed, are the most unlikely persons to have been called on to take part in so deep a tragedy. What does he say? "It was God loose me; the Almighty; I not tie too tight."

Next in order come nine witnesses, Anderson, Clarke, Donaldson, Duaney, Hamilton, Manning, Eliza Phillips, Cecilia Robinson, and Speed, who were all, more or less, eye-witnesses of the destruction of the three men, who saw them brought to the post-office by Bryan, Colson, and Wills, thus confirming them. What are the conditions or circumstances, then, out of which a conspiracy, as among these nine, is to be inferred? Anderson is not a parson or itinerant preacher; he certainly, it would appear, did live close enough to Manning, within a couple of miles, until among other wrongs, the school-house in which he was trying to do good was burnt. Clarke is, as you may well remember, as ignorant as it is possible for a boy to be at his apparent age, and his evidence was not much, but when brought in confirmatory contact with the statements of the other witnesses, establishes a great truth, and the same is to be said of Eliza Phillips; she too, not only gave very little evidence, but she gave it, as you may well remember, most unwillingly; she is a relative of Corporal Hunter; she saw very little, because she was always going in and coming out of the kitchen, but she saw the prisoners brought to the post-office, and if you are to believe the defence, not an individual, military, volunteer, or civilian, gentleman or labourer, white or black man or woman, came to the post-office that day; and if you are to believe the defence, the conspiracy and the lie cover the whole transaction, and no prisoners were brought to the post-office on that Saturday while the military were there; and therefore, as you must see that Eliza Phillips is not a conspirator, you get enough out of her to work upon in your endeavour to come to the truth. Passing on, we have Duaney, a man living as second lighthouse keeper at the Morant Point Lighthouse, required to be in close attendance at his post, and but seldom able to get a ride for an indulgence, and therefore not a man likely to afford the time required for plotting and maturing and rehearsing, and eventually acting in a conspiracy; for it must be remembered that this alleged conspiracy required profound contrivances and action; he is there, and Speed too, from Holland Bay, and Hamilton too, a respectable storekeeper from Holland Estate, and they witness the perpetration of the deed. Now, if the idea can be entertained for a moment, not only in the total absence of any evidence to establish it, but of the utter impossibility of planning and carrying it into effect, that any conspiracy existed, does it not occur to the Court that there must have been some most marvellous influence to induce these last-named men, well-to-do men in their station in life; men against whom it has not been alleged that any attempts were made during martial law; men who stand utterly unimpeached of any motive for doing a wrong act, especially one of such great magnitude; does it not, I say, appear to the Court that there must have been some marvellous influence over these men which must be disclosed and explained before the Court can believe that they would fall into such infamy as this alleged conspiracy implies. The remainder of these eye-witnesses, then, are Manning and his two servants, Cecilia Robinson and Abraham George Donaldson. I must be permitted to speak at some length about Manning; and here I may remark, although in doing so I must apologise to you, Mr. President and Gentlemen, for stating what must be already well known to you, that it is not only the words which come from a witness's mouth that are evidence, but his general demeanour, his anxiety to try and impress his story upon his hearers, his betrayal of animosity, revenge, or any other evil passion, his bias to one side or the other, and a number of manifestations of over zeal for a side, that to a watchful judge may condemn a witness and send him out of court utterly disbelieved, far more than the utterances of his lips. I fearlessly subject that honest man, George Manning, to this

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criterion; pass your judgment upon him in this respect, and I am confident that he will leave a satisfactory impression upon you of his truthfulness and purity. It is known that a special Court sat in Kingston for a long time during the months of February and March 1866, for the trial of persons who were implicated in the disturbances in St. Thomas-in-the-East in the autumn of 1865. If Mr. Manning had done anything which made him obnoxious to punishment, why may I ask was he not tried at that Court, and why did Ensign Cullen not forward to the authorities, who were then acting under that jurisdiction, the reports and charges which had reached him, and upon which he sought for Manning during martial law; why was "the charged and flying rebel" not brought to justice; why was he not even charged? So far, then, as proximity of residence and of facilities of intercourse, and of plotting, and arranging this conspiracy go, up to this stage of the proceedings it would appear that Manning and his two servants are the only ones who were able to do so, yet we find ten others implicated. The evidence, however, to make out this case, and the conspiracy, as the prisoner calls it, does not end here; there is a new class of witnesses altogether, deposing to distinct and separate facts; a class of witnesses and a description of evidence which will puzzle a philosopher to tell why they should have joined in a conspiracy, or how they could have worked it out if they did.

Alfred Brooks leaves Golden Grove Estate on the morning of the 22nd October, and on his way to Holland Estate for prisoners, sees the dead bodies of Walton, Miles, and M'Call tied to the bamboo rail. Before I accompany Brooks and others back from Holland Estate, I may here remark that, as the Court no doubt sees, I am now confining myself to the case made out for the prosecution; I will reserve for my observation on the defence, to which indeed it properly belongs, all I have to say about the onslaught made on Brooks and his credibility. To proceed then: Brooks first associates himself with seven constables, two of whom, Speed and Hamilton, I have already spoken of, being two of the witnesses who were present at the execution on the day before; of the five others, four have been before you, namely, Bevis Hunter, Thomas Brown, James Sproul, and Allan Bignall; may I ask you if you could desire in any country to have brought before you, or to see brought before any Court four more respectable, well-conducted men, four men who gave evidence more clearly, and as far as it was possible to judge, more truthfully; can the Court forget when it was attempted to involve Sproul in corrupt complicity with Brooks by a question as to when last he had seen Brooks, how he answered, in a tone commanding respect, "From that 22nd October 1865 unto this day I have never seen Mr. Brooks"? Can the Court fail to remember the ease and readiness and confidence with which every one of the many questions put to all these witnesses, to involve them in mutual complicity, were met and defeated? Brooks then with these seven constables and about 30 prisoners, only one of whom, Richard Roden Francis, has been examined, marched from Holland Estate on that Sunday morning, reaching the Iron Bridge at about a quarter past 10. It is material to keep this time in mind, as it will be referred to when I come to address myself to the defence. At that iron bridge, Brooks ordered the constables to take the 30 prisoners down the road to see the dead bodies of Walton, Miles and M'Call, and he went with them; with the dead bodies in view, Brooks tells the prisoners that that would be the fate of some of them, and then he marches them on to Golden Grove Estate, at which place Richard Roden Francis tells you he was flogged; and yet there is more.

Five witnesses then (and it must be remembered that there are many more with whom I did not think it necessary to trouble the Court), namely, Wedderburn, Warren, Bailey, Bartley, and Taylor, all from Amity Hall, another estate lying in an opposite direction to that from which the other witnesses came, have appeared before you and deposed to the facts of repairing to that bamboo rail about 11 or 12 o'clock in the morning of the Sunday following, and that after digging a shallow grave, they removed the bodies from the rail, and placed them in a particular position with respect to each other in that grave. Now as concerning these witnesses, I might here enquire whether any of them exhibited such a degree of worldly knowledge as would induce you to believe in the possibility of their being parties to so skilful a contrivance as the conspiracy in which they are said to have participated. But does the evidence to establish this most consistent and unbroken narrative end here? No; there remains to come the most important part of it. There is the triple phenomena of the bodies now lying in the engine-room of these barracks, exhumed by the same persons who committed them to earth. I have placed before the Court four other witnesses, Captain Hole, Drs. Kerr, Fiddes and Scott; the evidence of the first of these was intended to be merely formal, namely, to prove that the prisoner being in medical charge of a detachment of troops under the command of Ensign Cullen, left Muirton or Manchioneal in company with it, for the post-office at the Iron Suspension Bridge on the morning of Saturday the 21st October 1865, and, so far as the case for the prosecution goes, that is all; but I have to request that the Court will carry in its mind the particular terms of the order from Brigadier General Nelson, then in command of the field force, in obedience to which this detachment was sent away; because I shall feel it my duty when I come to address myself to the evidence in defence, to animadvert in very strong terms upon this order, and its effect upon the transaction under investigation.

The other three witnesses were called, not because I considered it necessary to establish the case for the prosecution, but in anticipation of the defence, and therefore, with the permission of the Court, I will reserve my remarks on their testimony to a subsequent part of this address. This is what is technically termed the *primâ facie* case for the prosecution; I may have been tedious in drawing attention to it, and in recalling to your notice the testimony in the order of occurrences; I make no apology for this, for, seen by the light in which

which I see it, I am only afraid that I have not been fully equal to the conduct of so important a case. Drawn to its close, however, I am justified, I think, in asking you if ever case so clear, so consistent, and so satisfactorily made out, came within your province to deal with in any capacity, or if in the experience of any of you, there is one on record. Here is no circumstantial evidence, here is no one or two points made out, and the others left to be filled in by force of circumstances, or the necessary concurrence of events; no disconnected story which calls for a strain upon the imagination to make it entire and consistent, no link is lost, no gap is left open, and with the utmost confidence do I add, that neither because of the way in which they have given their evidence, that is, their demeanour before the Court, nor because their story is inconsistent, parts with other parts, nor because any has contradicted himself, nor because they contradict each other on any substantial point, nor yet because of any relationship existing among them, or on the part of any of them, towards these three destroyed men, nor yet because of any conceivable human, or inhuman motive for falsehood, is there ground for not accepting this evidence, and upon this the *primâ facie* case, saying at once that the prisoner is guilty.

But the prisoner is entitled to call witnesses to impeach this testimony, and to address the Court on the whole case; he has availed himself of this privilege. I will first deal with the evidence he has adduced; he has examined 47 witnesses. As the witnesses were called without regard to the charges or the events, it seems necessary, in order to give the Court what may not improperly be called a bird's eye view of the defence, to tabulate the evidence. With respect then, to the first charge concerning the death of Billy Gray, the evidence may be said to consist of the four following main statements:—

1st. That the prisoner's revolver was broken before the alleged shooting, and remained so, and was so seen by several persons.

2ndly. That the prisoner left Muirton that morning without a revolver.

3rdly. That people went to Grange Hill on that day, and saw no dead body there.

4thly. That the prisoner did not go to Grange Hill on that day.

Now with regard to No. 1, it is supported by seven witnesses; I think I may safely dismiss it with few remarks; as particular as each of the witnesses who speak to this point was that he saw the broken revolver on the window in the room of the Muirton house, in which their rum was served out to them, none has ventured to assert that he was permitted, or that without permission he ever took the liberty, to search the prisoner's baggage to see how many revolvers he had with him; none has ventured to say that the prisoner did not, or could not, by any possibility have procured another revolver when the first got broken; to be sure it is deposed to by one or two of the witnesses, that neither Ensign Cullen nor any of the men in the detachment had a revolver; but does that prove either that the prisoner himself had not another revolver, or that he could not have procured one from any person other than those in the detachment, that is, always supposing that the evidence on this point, namely, that no one in the detachment had a revolver, be accepted as true?

No. 2 is a little more plausible; it is supported by five witnesses. This extraordinary statement is backed up by the equally strange one, that the prisoner left the place with his sword belt over his patrole jacket; the Court cannot fail to remark how necessary it was for the witnesses who made statement No. 2, not to support it by this further one, because it would have been scarcely possible for any one to swear with any degree of certainty that an officer had not a revolver with him if he wore his sword belt in the more usual way, or under the patrol jacket. Of Ensign Cullen individually I wish to say as little as possible; I therefore pass him over here; of the other four I can but express my surprise at the singular and very unaccountable occurrence of four men, who had no object whatever at the time for making such an observation, not only making it, but (and equally without object or reason) that it should have become so impressed on their memory as to enable them at the lapse of 12 or 13 months to speak of it with so much certainty. The wonder is increased when we find two at least of these men, Edge and Handley, improving the occasion, and adding to the statement that they saw the prisoner return, too, in the evening without a revolver. But should the Court even believe this statement, before it can be accepted as a sufficient answer to this charge, or as forming a sufficient part of an answer to the charge, you must, I submit, be clearly satisfied that there was no possibility whatever of the prisoner becoming provided with a revolver at any time between that at which these witnesses lost sight of him, and his return to Muirton; that, too, during the heat of martial law.

No. 3. Here we have again three of the same men (with the addition of Serjeant Webster), who proved No. 1, and I think that I may dismiss this with the same indifference as to its effect upon the charge as I have expressed with respect to No. 1. Here we have it stated that six private soldiers with a serjeant were allowed to go forth, whithersoever they would, for their amusement, fully armed; we have it in evidence, too, that others to whom the same license was allowed amused themselves with shooting hogs with Her Majesty's ammunition, and we are left in no very difficult conjecture as to the extent to which amusements involving more serious consequences were indulged in. Is it any wonder, then, even if the amusements for which the Queen's ammunition was employed was confined to shooting hogs, that a class of people who had no guarantee against being mistaken for rebels, and summarily disposed of, should have considered it prudent to keep

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out of the way, and afford no information about dead bodies to seven armed men, of whom they might well have been afraid? And as to not seeing the dead body of Billy Gray, why each of these witnesses admitted that they did not go into any house, and the Court will remember that the body was removed into the Old Buckra House by Grant; of course, then, these witnesses could not have seen it.

No. 4. This is, perhaps, the only part of the evidence for the defence on this charge which is of any importance. "It is, in substance, an alibi." The five witnesses who make this statement are Ensign Cullen, Hunter, O'Connor, Wolstenholme, and Blythe. To take O'Connor and Wolstenholme first; you will find, I think, on examination of the evidence, that these men deny all knowledge of Grange Hill; they say they went to Haining, and they saw no man shot on that day. It must appear to the Court to tinge the evidence of these two men with much suspicion, that living, as they appear to have done, for some time in Muirton, they never heard the name of the adjoining property. The next is Blythe; he does not fix any date by which the Court can satisfactorily identify the journey of which he speaks with that in the course of which Billy Gray was shot; he says, "he went with the first detachment that left Muirton under Ensign Cullen with Assistant Surgeon Morris, and never was at Grange Hill." It must not be forgotten that this, a raw recruit, is the man to whom the prisoner made a promise of getting him appointed lance corporal. In like manner Corporal Hunter says, he "never went on that track where there are two bread fruit trees; he never saw any one shot at or near Muirton;" he fixes no date, but says, "the first time I went, it was up the Haining-road; I was sent up the Haining-road with Ensign Cullen and Doctor Morris." Of Ensign Cullen, as the fifth witness in this statement, I have already said I do not wish to speak individually; it is difficult to place any reliance on these statements. Billy Gray is not here; you may call for him, but until the last trumpet shall sound, and summon him from that eternity into which the prisoner hurried him, your call will be re-echoed back without response; his absence is as strong a part of the evidence as any word spoken.

I come now to the second charge against the prisoner, namely, that for shooting three men, Walton, Miles, and M'Call, at or near the Iron Bridge over the Plantain Garden River, and adjacent to the post-office, the Duckenfield estate lying to the south, and the Amity Hall estate to the north of the River. To ensure a right understanding of the case, it is not out of place to remark, that the Queen's-road from the Golden Grove estate lying about a mile to the West passes the post-office, and leads directly to Holland Bay, which is about two miles or under, onwards in an easterly direction, and the road almost runs parallel with the river. The defence of the prisoner, irrespective of conspiracy, is—

1st. That no one heard any talk about these three men having been shot, about the time it is said to have been done.

2nd. That no one saw marks of a grave in the Duckenfield grass piece.

3rd. That the prisoner when he arrived, and all the time he remained at the post-office, was too sick to do the act complained of.

4th. That Corporal Hunter was not present at the post-office, or in the vicinity, at the time the witnesses for the prosecution say he took part in the shooting.

5th. That several persons who were present did not see any men shot, and they must have seen it, had it occurred.

6th. That several persons passed the next day, and saw no dead bodies, and no one digging graves.

7th. That Brooks was sick, and unable to go to Holland Bay or Holland estate on the Sunday morning, and did not go.

8th. Medical opinions and miscellaneous evidence.

I will call attention to these eight, which seem to be all the leading features of the case for the defence, and to the bearing of the evidence upon them, and then I will return to the conspiracy.

No. 1. I think scarcely necessary to trouble the Court with at much length, or to enumerate the witnesses who speak to it. It may be taken for granted that none of the witnesses for the prosecution ever spoke about it; and why should they? Could there have been such subsidence of the feelings engendered by martial law as would have emboldened anyone to speak of wrongs done while it lasted; and must not every one have been thankful that it had ceased to prevail, and he had escaped, and but too willing to say nothing of the past; and unto whom were they to speak? Can the Court expect that any one of the witnesses for the prosecution could have gone to any one of the witnesses for the defence, and have told them anything about the shooting of these three men. The only two between whom there was equality of position in life, namely, Bryan and Moyle Wilson, brother book-keepers, on the Duckenfield estate, however did speak about it; what says Moyle Wilson in answer to a question put by the prisoner:—"If he heard on the 21st of October whether prisoners were shot at the Iron Bridge on the 21st October?—I did not hear of it on the 21st October; I first heard of it two or three months after when making inquiry of the people, and they told me they were shot at the Iron Bridge; the inquiry I made was of Samuel Bryan, the head man at Duckenfield." And again, in answer to another question, "What caused you to make inquiries about these men?" he says, "Because I had seen them working on Duckenfield estate previously, and at the time of my inquiry they

they were absent for some time;" but I think I may lay claim to this silence on the part of my witnesses as negativing that conspiracy which could not have been matured without much communication; of this, however, I shall have occasion to speak more at length afterwards.

No. 2. No one saw marks of a grave in the Duckenfield grass piece. The witnesses who speak to that are Mr. Sinclair, Moyle Wilson, and McDermott. I shall take Moyle Wilson first; about a month after martial law, he went to the grass piece and saw no signs of a recent grave; now, you will find by the evidence of the next witness, Charles Henry McDermott, that the grass piece was scythed down before martial law; there can be no mistake about this, for the witness repeated it over and over; the answer evidently took the prisoner by surprise, and he tried to make the witness alter the statement, but the witness was firm "that the scything was before martial law," and he gave his reason for being certain about it. After martial law, he says, the grass was fresh and growing up quite young; and he says, when asked "if he was near about that bamboo draw rail at the end of October or beginning of November 1865, and did he see any recent marks of fresh graves?—" "I saw no recent marks of fresh graves; I did not go into the grass piece for the purpose of looking for that." Here, then, are two book-keepers both saying they went to the spot and saw no grave, and both, no doubt, speaking the truth, but one speaking the whole truth, in so far as he tells the Court why he did not see the grave, and a most satisfactory reason it is: "I was not sent there to look for a grave" (nor was Mr. Wilson); and having stated the fact (which Mr. Wilson omitted) that the grass was fresh and growing up quite young, he affords the Court the means of seeing that unless his attention had been directed to, and he had received orders to search for, such an appearance, the fresh grass would have hid all traces of a grave dug and covered up in the way the evidence shows this to have been. Now for Mr. Sinclair; he says, "I went to the grass piece, for the first time after October 1865, in the first week in November 1865; I have had occasion to go in there frequently since; I passed through the draw rail, and close on the spot where the grave has since been opened; there was no sign or recent appearance of any grave about that spot." And again, "I saw the spot; I could not help seeing the spot on every occasion that I went into the grass piece, because my horse would pass very close to it." And then this question was put to him: "In April 1866, and on your visits up to the time the grave was opened, did it present a different appearance to the time when you saw it in November 1865?" to which he answers, "It presented the same appearance as it did between the time from the 1st of April to the time the grave was opened in September 1866." This is not as clear as it might be; but what the question sought, and the answer intended to assert, is, that the spot where the grave was opened and the bodies taken from, presented the same uniform appearance from November 1865 until the grave was opened in September 1866. Now, if this evidence be worth anything at all, it proves that no grave was dug and no bodies buried in that grass piece between November 1865 and the 26th September 1866, when, under my inspection, the bodies were exhumed. What is principally to be inferred from this will be spoken of afterwards; for the present I must say of Mr. Sinclair what I said of Mr. Moyle Wilson; he did not go into that grass piece to look for a grave, and he does not say that he did look for a grave, and his not seeing one is to be accounted for in the same way as is Mr. Wilson and Mr. M'Dermott's non-observance of one, namely, the grass had grown high and luxuriantly over it; and the Court must remember that all the evidence goes to show that there was no great mound of earth on the grave; the earth was only scraped away 19 inches deep, the bodies put in, and the earth scraped over; and in a very damp soil, such as this has been proved to be, with the spring and autumnal heavy rains (or seasons, as they are here called), which are known to fall in the tropics, it is not, or ought not to be, any matter of surprise if no traces of such a grave could be seen by a casual observer, and one who, until a long time after, did not hear of the existence of any grave there.

No. 3. That the prisoner when he arrived, and all the time he remained, at the post-office, was too sick to do the act complained of. I do not deny that the prisoner was ailing; but when the Court looks to the remedies which were applied, viz., rubbing the head with florida water (hot tea), fowl soup (which the prisoner asked for, and which was prepared and sent after him to Golden Grove), and a cold bath, the Court can fairly enough draw its own inference as to the character and cause of the ailment.

No. 4. That Corporal Hunter was not present at the post-office, or in the vicinity, at the time the witnesses for the prosecution say, he took part in the shooting. Those who speak to this point are Mr. Cruickshanks, Sinclair, Hunter, Ensign Cullen, Maddix, Gordon, and Blythe. Mr. Cruickshanks says he saw him, Corporal Hunter, and two or three other soldiers at Golden Grove. This evidence is very suspicious; the witness evidently having been made to see what is required, tries to cover the time that Corporal Hunter was at the Iron Bridge participating in the mischief which was done there; he says, Corporal Hunter arrived there, that is, at Golden Grove estate, about two hours before the soldiers of the 1st West India Regiment (meaning those under the command of Ensign Cullen), and that the main body of the troops, under Ensign Cullen, arrived at Golden Grove after the volunteers; he cannot say the exact time, but it was some time after two o'clock p.m. Now, if his evidence remained here, there would be very little difficulty about it, because all the Court would have to do would be, first to fix the respective times of arrival by a fair average of what all the witnesses say, and to reduce the two hours, of which the witness himself is not certain, for he only says about two hours. Then, if the main body arrived at 3.30, Corporal Hunter may possibly have been seen a short time (not exactly, as the witness says)

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before the main body arrived, because he does not say that he saw them arrive, but before the time when he first saw them, which he, of course, fixes as the time of their arrival; but this witness goes on to say, which is wholly irreconcilable with the foregoing, that when he saw Corporal Hunter at Golden Grove it was nine o'clock or after; "I did not note the time; it was after nine a.m." Now, this is why I say his evidence is suspicious; if a truthful man is about to fix the hour of the happening of an event, if he cannot speak with certainty, he at least says it was after the last hour, that is, the last striking of the clock; if he means to say it was after twelve, he does not surely say it was after eight. It is quite clear that the main body did not reach Golden Grove until three at the earliest; and, even allowing the two hours, the witness ought to have said it was after one, but that would not cover the time; for Corporal Hunter's arriving at Golden Grove at one would be possibly consistent with his being present at the shooting of the men at twelve or 12.30 at the Iron Bridge; therefore, the witness says he saw the corporal after nine o'clock (wishing it to be inferred, of course, that he meant before ten) at Golden Grove, guarding himself, however, against saying so positively. As one does not wish, if it be possible to avoid doing so, to impute untruthfulness to witnesses, let us see if there is any hypothesis on which this statement, that Corporal Hunter was seen at Golden Grove at nine a.m. on the 21st October, can be reconciled with the other testimony. I think there is. It is known that no spirits were sold at Manning's shop; it is known that several shops and a market, in fact, are at Golden Grove; and it is known that a person can walk from the post-office to Golden Grove and back in about half or three-quarters of an hour; the distance is only a mile; is it, therefore, impossible or unreasonable to suppose that Corporal Hunter, of his mere motion, went alone, or was followed by one or two privates bent on the same errand to Golden Grove, to supply themselves with rum, and that he or they returned to the main body at the post-office before any prisoners were brought in, or any of the events which the Court is inquiring into commenced, and that on this visit he may have been seen by Mr. Cruickshanks? Is there nothing in Corporal Hunter's own evidence favourable to this view? Remember, that he says he went alone from the post-office to Golden Grove, and heard the clock strike nine a.m. near Golden Grove.

Now for Mr. Sinclair; he says, immediately after my arrival Corporal Hunter complained that he had been there some time; that he had men with him, and had had nothing to eat. This is all this witness says on this point; it is not satisfactory, nor such, I submit, as the Court will attach any importance to, especially when it is given to assist a statement which I shall proceed otherwise to show, almost conclusively, is incorrect; and as to Mr. Sinclair himself, you cannot fail to remember that he has given evidence which is officially known to you to be incorrect; for he endeavours (with an ill-conceded strong bias in favour of the prisoner), to make the Court believe that a man on horseback, opposite the post-office, cannot see a person standing at the bamboo rail; and he also says that a person standing at or near the door of Manning's shop, cannot see the head of a person at the bamboo rail at any time, whether the fence be high or low. This he says he has recently tested. The Court has been to that place, and have made their observations for themselves, and they know how far Mr. Sinclair is to be relied on in this respect. If, then, Mr. Sinclair can make such a mistake about a matter of eyesight, what limit is to be put to the mistakes which he may make as to the exact time of day of occurrences happening 12 or 13 months ago, which were then very immaterial? It is a curious circumstance that he should be able to remember this trivial incident so well; and, after all, what does it amount to? He saw Corporal Hunter immediately after he (Sinclair) arrived at Golden Grove. Now this is only comparative; to be sure, he says that Ensign Cullen came after; but what he calls immediately may have been a couple of hours, or even one hour after his arrival; and, if so, all would be true and consistent, for it is admitted that within an hour of Mr. Sinclair's arrival at Golden Grove, Ensign Cullen and Corporal Hunter were there, and Mr. Sinclair may have seen Corporal Hunter first, a quarter of an hour after those from the Iron Bridge came, and Mr. Cullen three-quarters of an hour or an hour later; this would make his evidence true; and it is not absolutely inconsistent with what he says if a very little license be taken with his time, which he himself does not venture to be certain about. I think this statement much too loose to be depended upon, and therefore I shall pass on to the next witness in this branch of the defence, and he is Corporal Hunter himself. His account contradicts that of all the others who speak to his going away from the post-office. He says he remained five minutes at the post-office, and that he was sent on by Ensign Cullen on the advance guard to Golden Grove; that he went; that he was sent alone; that when he arrived there he saw Mr. Cruikshanks, and remembers speaking to the overseer of Duckenfield, and that when he was there he was knocking about, looking for a place for his men to stop in. With the exception of refreshing your memory as to the glib and evidently previously well-instructed manner in which this witness (Mr. Cruikshank and Sinclair having previously said that they saw him at Golden Grove) stated that he saw Mr. Cruikshanks and Mr. Sinclair at Golden Grove, he never but once, 11 years before, having seen Mr. Sinclair, I shall dismiss him for the present. Maddix says the advance guard was sent and went, a section of about 10 men, with Hunter; it left all together. Gordon merely says an advance guard was sent, of which Corporal Hunter was in charge; and Blythe says there was an advance guard, Corporal Hunter was in command; but he goes on to say that the same advance guard came on from Muirton with the detachment, and passed the post-office, straight on to Golden Grove, without halting. So far, had this alibi, which this evidence is intended to establish, rested here, it would, I submit, as against the clear testimony for the prosecution, have failed to convince the Court of its truthfulness;

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but it is wholly, most positively and clearly contradicted by one witness for the defence, Leslie, whom, the Court may remember, swears positively that Corporal Hunter never left the place until three o'clock, when all went off together. These are his words: *Q.* "Did you see Corporal Hunter at or about the post-office immediately before you went to bathe?" *A.* "Corporal Hunter was there; he halted his men under a tree; I saw him when he halted." *Q.* "Did you see Corporal Hunter at or near the post-office when you returned from bathing?" *A.* "He was there." *Q.* "At what hour of the day, as near as you can judge, did the detachment leave the post-office?" *A.* "They leave at three o'clock." Then he says, "Corporal Hunter fall in his men, and got the order to march, and we fall in; he was far in front; Corporal Hunter went no time before the rest; as he marched off, we were falling in." There remains one witness who speaks to this point; and, although he intends by his testimony to confirm, I think it will be found that he most successfully destroys it, if we take his statement in conjunction with his orders, and the statements of other witnesses; and he is Ensign Cullen. The Court may remember my request in a former part of this address, that it would carry in its mind the particular terms of the order from Brigadier General Nelson, in obedience to which the detachment was sent by Captain Hole from Manchioneal to the post-office at the Iron Bridge that morning. I will only quote these words of it: "Great importance is attached to the party leaving Manchioneal at the above hour, and nothing is to diverge or hinder their march on to the post-office, extreme emergencies alone excepted." For some reason not explained the detachment left, according to some accounts, only 25 strong, half the number ordered; but certainly only 30 strong, according to Ensign Cullen. Young in the service as he undoubtedly was, can the Court believe that Ensign Cullen was either so ignorant of his duty, or so unmindful of the importance of obedience to orders, and especially in time of active duty, as, having already a deficiency of nearly half the number of men ordered, that he would, or could, or did, commit the egregious blunder of sending away one-third of those he had upon the report, as he says, of a flogged rebel; that the detachment which was to meet him at the post-office was coming to Golden Grove, that place being in the direct line of march to the post-office. Had Golden Grove been in another direction, he might have supposed (although that would have been wrong too, especially when the authority was a flogged rebel) that the plan was altered; but Captain Adcock's detachment from Morant Bay must have passed through Golden Grove to the post-office, which, according to the order, was the point of meeting; and, therefore, if the information, had it been received, was worth anything, it intimated that the course was in accordance with previous arrangement, and, so far from justifying Ensign Cullen in departing from, rather required him to act more strictly in accordance with orders. Small pieces of evidence, too, sometimes prove a great deal. One witness, Leslie, says that Corporal Hunter was sent to show the road to convey the troops to Golden Grove (it must be remembered that Corporal Hunter was born and, until he enlisted, lived in the district), and yet, having at least one serjeant and other corporals, Ensign Cullen sends the guide away; and surely, if it seemed necessary to send on to provide quarters for the men, a serjeant was much more adapted to the discharge of this duty than a corporal. But what do we find going on elsewhere as throwing the true light on this point of the inquiry; Mr. Harrison rides with Captain Adcock, and they get to Golden Grove together. Says Mr. Harrison, in evidence, "When I arrived at Golden Grove, two troopers, Berry and Brandon, were sent on by Captain Adcock; their orders were to rendezvous at the bridge; but, on my information that there were no houses there, they (meaning Berry and Brandon) were recalled, and were told that they (meaning Ensign Cullen and his detachment) were to meet at Golden Grove." Here, then, we do not see Corporal Hunter on the stage, making any report to Captain Adcock; and, according to Mr. Harrison, Captain Adcock would have proceeded to the post-office, but for the information supplied by him (Harrison) about the accommodation, whereupon Adcock sends to summon Cullen and his men. To believe Ensign Cullen the Court must disbelieve almost all the other witnesses; for, putting aside the improbability of his acting in such direct contravention of orders, and the inconsistency of his so acting, with what passed between Captain Adcock and Mr. Harrison, he acted, he says, upon the report of a flogged rebel who came from Morant Bay that morning, and was returning home; and all the other witnesses say, not only that no one came to the post-office while they were there, but that no one could have come there without their knowing.

No. 5. That several persons who were present did not see any men shot, and they must have seen it had it occurred. This is a sister statement to No. 4; they tend to support each other. It is spoken to by Ensign Cullen, Hunter, Maddix, O'Connor, Wolstenholme, Gordon, Blythe, and Leslie, eight witnesses, five of whom, namely, Ensign Cullen, Hunter, Maddix, Gordon, and Blythe, are the same who (with the addition of Sinclair and Cruikshank) speak to No. 4. Not to quote their words, which would be tedious, I may shortly say that they all deny the shooting; and, as a man who would tell this untruth may be readily supposed to be quite capable of telling No. 4, I may be permitted to incorporate the two statements. To answer a case, then, made out against the prisoner by the clear testimony and means before described, what is put forward? Eight men, one himself under the same charge, and recently tried for it, and seven soldiers, all under his command, if not now, certainly at that time all more or less involved in the charge. These eight men say the act was not done, and to prevent the possibility of their falling into any mistake, or affording any clue by which they may be embarrassed, or any contradictions may appear in their testimony (except the fortunate one of Leslie's complete contradiction of Corporal Hunter's absence), they say, what one of them, Ensign Cullen, contradicts, that during

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the whole of that day, from their arrival at nine o'clock in the morning to their departure at three in the afternoon, no one single soul came to that post-office, it being a Saturday, a market day, with a market a mile off, and a shop at the spot at which it must be supposed the people of the neighbourhood were in the habit of resorting. Before the Court, then, can acquit this prisoner, it must make up its mind to believe these eight men, five of whom are the same who swore, in like manner, that Billy Gray was not shot, and it must reject all the testimony for the prosecution, for upon this, and this alone, I submit, the issue depends. All the remaining evidence is inapplicable and redundant, and what little of it may, upon examination, be found to be true, will also be found to be impertinent, and what may be said to affect the case will be divested of all semblance of truth by the tests and comparisons to which it can be subjected, and will be destroyed by its conflict, as I may say, with itself. Repeating, then, my regret that I have to discharge a duty which is very painful to me, but which I will not shrink from, I must call upon you to pronounce the condemnation of untruthfulness against these three men, Maddix, Gordon, and Leslie. I am unable to suggest any means by which you can determine either of the charges, without either absolutely disbelieving these eight men or rejecting the entire evidence for the prosecution, including that which the finding of the three bodies and the absence of the four men furnish.

No. 6. That several persons passed the next day and saw no dead bodies and no one digging graves. I will begin to dispose of this statement by referring to four of the 10 witnesses who speak to it, namely, Fowles, Chisholm, Astwood, and Davis; two of these, namely, Fowles and Davis, say very little, and their evidence is scarcely worth referring to; the general remark, however, may with confidence be made, that it was not likely, nay, it was not possible, for any person riding or walking from Golden Grove to Amity Hall over the Iron Bridge to see the dead bodies of the three men at the bamboo rail; it has not been stated by any of the witnesses for the prosecution, nor was it ever pretended by anyone, that the body of a person standing at that bamboo rail can be seen by a person either standing at the post-office or going over the bridge; all that has been asserted is, that the head of a person standing at the rail when erect would be visible from the post-office, and the heads of the men who were shot, according to the witnesses for the prosecution, fell when the shot was received, and then nothing was seen. Mr. Chisholm, the witness, who says least next to these two, you may remember, only went as far as the Iron Bridge; but he could not remember how long he was away, nor does he remember at what hour he went there; thus, speaking very loosely as to time, and, no doubt, with as much looseness as to distance. To make up the four, then, we have Mr. Astwood; he is one who takes such interest in the issue of this inquiry as to have returned to the post-office to make experiments as to sight and distance, in order to convince the Court against its own personal observation. He went, like Fowles and Davis, over the bridge; but he is obliged to say, "that from recent observations he could not have seen them had they (meaning the bodies) been there." Of the remaining six, Berry says least; he spoke fairly enough; he went into a grass piece opposite the post-office, and then in a direction to the right; the place where the bodies are said to have been tied being in a direction to the left; he there made entomological observations of black insects which he saw on some canes, and he came away. There need be no more said to show why he did not see the dead bodies than to call the attention of the Court to the locality. I must, therefore, say, that out of 10 witnesses who speak to a statement which, viewed superficially, seems to be important. I am able to dismiss five without in any way impeaching their testimony. There are three who come into something like collision, Harrison, Brass, and Watson, that is, among themselves; but they also come into collision with the remaining two, Bedford and Cox. Of Harrison, first, "He was guide during a slight stoppage; a few of the men went down on the eastern road towards Holland Bay, beyond the suspension bridge. I asked Captain Adcock if he was going to Holland estate, and he said "No." I then said, "These people are going a wrong road, and there was a regular shout calling them back." Now, it is, it must be, to those who know the locality, beyond the possibility of a doubt, that when the shout was given the men who were going the wrong road were in sight; but before I proceed to deal with his evidence as affecting others, let me first show that Mr. Harrison himself could not have seen the dead bodies, and so dispose of his evidence, except in so far as I may require it with respect to other witnesses. He, you may remember, stopped at the cotton tree to the westward rather of the post-office, and looked over the fence for his black horse. The Court knows, from personal observation, that from the spot where that cotton tree stands he could not have seen the dead bodies. He then, in cross-examination, says, "I barely went to the blacksmith's shop." The Court also knows where this is, and that, from that spot, too, he could not have seen the bodies; he, therefore, is disposed of, and, so far as his evidence is applicable to the facts in issue, I may say of him as of the first five; but he is involved in the contradictions which I am about to refer to. I begin with Mr. Brass, and I might at once dismiss him, as I have the five first, without censure, but that I require him, too, to establish a great mistake on the part of Mr. Watson. Brass says, "We kept the straight road, the main road leading to Holland Bay; there were several of the troops that went on this road, Serjeant Allan, Private Watson, and others." Here you see Watson in company with Brass. "I heard a shouting calling us back, and I turned back; Watson was one file in advance of me; I went down the road, I should say from 25 to 30 yards, reckoning from opposite the Iron Bridge; Watson was not more than a horse's length before me; when I say that, I mean that he was as close as we possibly could ride together, he being in the front and I next to the man behind him." Now, then, taking Brass by himself, it

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is agreeable to me to be able to say that I can honourably dismiss him, too; he spoke fairly enough, and showed no feeling; going down the road the length he did he could not have seen the bodies, that is, taking the utmost distance, he guesses (30 yards); but I must bring him in contrast with the remaining man of the first eight of the 10 who speak to this point, namely, Mr. Watson. It may, perhaps, have come under the notice of the members of this Court, that in giving an account of any occurrence, especially where the relators are young people, there is almost always one who tries to excel in power of description, and even to the extent of rudely interrupting others, to monopolise the audience, and to strive at obtaining the praise of being the hero of the occasion; and this feeling not unfrequently leads to the admixture of romance in the relation of an incident which, without it, would, perhaps, be wanting in point or excitement. And thus it is with Mr. Watson; forgetting the modesty with which most people would speak, who depend on memory, of a transaction which occurred 13 months ago, and in which at that time he could not have taken much interest, he, beyond all the witnesses, tells the Court that he went down the Holland Bay-road 250 yards; and then, this question being put to him, "Did you then take notice of a bamboo draw rail in a logwood fence on that Holland Bay-road, are you sure?" Mr. Watson, not content with answering "Yes," which yes, to a question so framed, would have implied that he was sure, thinks it right to make assurance doubly sure by answering, "Yes, I took notice of it; I am positive I saw it on that morning;" which means I am positively sure or surely positive. Let me quote a little more of his evidence. Mr. Harrison, he says, ordered him back, and the order was given by word of mouth. "I heard the order given, and I returned in obedience to it." *Q.* "Where was Mr. Harrison when he gave the order?" *A.* "He came pretty near to us." *Q.* "State, as near as you can, how near Mr. Harrison came to you?" *A.* "Within a very few yards, to the best of my recollection." *Q.* "This, then, was when you, and the others with you, were about 250 yards on the Holland Bay-road, as you say?" *A.* "Yes." Then he says that Allan, Lofthouse, and Brass returned with himself and Mr. Harrison to the post-office, where he found the others in the act of crossing the bridge. Now, not to tire the Court with the quotation of any more of Mr. Watson's evidence, it is clear that he, Mr. Harrison, and Mr. Brass, cannot all be right. Who, then, is wrong? If you say that Watson is, the whole difficulty about not seeing these bodies is swept away (with the exception, next to be noticed, Bedford and Cox's evidence); but it is not fair to say that a man is wrong merely to get rid of a difficulty. Is there any other reason, then? There is; because, in order to believe him, in addition to disbelieving Harrison and Brass, you must also disbelieve those who buried the bodies, and all those who saw them exposed there before they were buried on the Sunday morning. Is there yet any other reason? Yes; because the account which Brass and Harrison give is more consistent with other circumstances. "I heard a shouting calling us back, and I turned back," says Brass. "I saw the men going on the Holland Bay-road and I called them back," says Mr. Harrison. Now, these two statements are quite irreconcilable with the fact that they were 250 yards down the road, when, as Watson says, Harrison came within a very short distance of them and turned them back. The solution of this, then, is, that Brass and Watson, with the others spoken of by them, went, at the outside, 30 yards down the road, passing Mr. Harrison; that Harrison saw them going, and he and others called them back, that the main body passed on over the bridge, and Harrison diverged a little, that is, kept the Holland Bay-road, and went on it as far as the smith's shop, when he met them, and then all passed over the bridge; it is no wonder, then, that they did not see the dead bodies. There was a question persistently asked of each of these witnesses which might well have been spared, because the facts were very clearly established in the case for the prosecution; it was, whether any of the witnesses had seen any persons that Sunday morning with hoes, shovels set or digging graves. The hour at which this party left Golden Grove was fixed beyond any mistake at between seven and eight o'clock; it was at least ten o'clock when Manning spoke to the black soldier, who passed on to Amity Hall; and Zachariah Bayley, a very intelligent witness, says, that when he and the others went to bury the bodies, "this time them (meaning the Golden Grove party) done burn the meeting house, and gone." That Sunday morning's conflagration and destruction of a place of worship was done, according to Mr. Astwood's evidence, at nine o'clock, and it is shown by all the witnesses for the prosecution that the bodies were buried between 11 and 12. I am brought now to consider the evidence of two witnesses, Bedford and Cox, who make up the 10 spoken of at the commencement of this No. 6 division or statement. These two men, private soldiers of the 26th Regiment, happened, according to their statement, to have accompanied the party which left Golden Grove early in the morning of the 22nd. If they are to be believed, Harrison, Brass, and Watson cannot be; permit me to show why. Bedford was first examined; he says, "I stopped at the post-office for a few minutes to change my saddle; I spoke to a man standing against the post-office, I don't know who he was. I went straight down the Holland Bay-road, between 200 and 300 yards from the post-office. I saw no dead bodies; Cox and Barnes accompanied me, and Barnes is dead; the main body had nearly reached the first village, when I returned back and overtook them, and the main body was setting fire to a house. I did not notice a bamboo rail fence, I had only been there once." *Q.* "How did you know it was the Holland Bay-road you went on that morning; did you know it at the time, or did you learn it since?" *A.* "I ask the man at the post-office I was talking to that morning the name of the two ways. I arrived with the main body at the post-office; we had a race down the road for our own amusement. I am rightly understood to say that the race was before any of the party left the post-office to go in any direction; and I am rightly understood to say that on my return, the

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remainder of the party was onwards, near to the little village". Then he is asked, "On your return to the post-office, did you overtake or pass anyone on that road?" and he answers, "No." Cox says," I went straight along the road; I stopped at the post-office, one of the men that was with me, Private Bedford, had a portion of his saddle broken, and he stopped to change it; I went down that road in the latter part of the old year, this December last (he was examined in January 1867). I went down the road on the Sunday, 22nd October 1865, between 200 and 300 yards; Bedford and Barnes were with me. I saw no dead bodies on that road, nor any tied to a bamboo draw rail fence near the road; when I returned to the post-office the detachment had marched on. I overtook them at the next village." Then this question was asked of him: "On your last visit to the Holland Bay-road, did you, in the presence of anyone, examine the bamboo fence in the grass piece opposite the post-office?" And he answers, "I was by myself, I saw the bamboo fence." On his cross-examination he says, he had never been on the road from Golden Grove to Amity Hall, or the road he calls the Holland Bay-road, before Sunday, the 22nd October 1865; he also says, "they (that is he, Bedford, and Barnes) were the first to leave the post-office; he rode as fast as the horse could go; he saw no one, either going or coming, besides the two men that went with him. On his return to the post-office, the rest of the party that left Golden Grove had gone on; there was none at the post-office on his return; he did not know on the 22nd October 1865 that it was the Holland Bay-road he went on, and he only knew it as such when he was down there in last December." Now, I ask the Court, in the first instance, to contrast the evidence of these two men with that of Harrison, Brass, and Watson, and to say, after doing so carefully, if both sides can be right? Had Bedford and Cox been, as they say, the first to leave the post-office after all arrived there, having waited a few minutes to change the saddle, and had they galloped 300 yards down the Holland Bay-road as fast as a horse could go, how is it possible they could have avoided passing Brass and Watson who, without stopping, rode slowly straight on the same road; or how is it possible the two parties could have avoided meeting, as Brass and Watson were going down, and Bedford and Cox returning, and yet Bedford and Cox are positive in saying that they neither passed anyone, overtook anyone, or saw anyone, and when they returned to the post-office all had passed on as far as the first village? You must remember both parties speak very positively; you cannot, therefore, reconcile the two accounts in their entirety. Let us see if there is any means by which both may possibly be shown to be to some extent right, and only wrong, not from wilful misrepresentations, but because of too great a reliance on impressions which are calculated to serve a cause to which they are favourable. First, then, I say, let the account given by Mr. Harrison, Watson, and Brass stand as I left it when dealing with them, and examine with me Bedford and Cox's grounds for their statement. To begin with, the Court must remember that neither of these men ever were on that road or in that vicinity in their lives before, and Bedford never since. The other, Cox, for some reason which may suggest itself to the memory of the Court, has been taken down to the place recently, in December 1866. Bedford says he asked the man at the post-office at the time the names of the ways, and was told. Cox admits that he knew nothing of the names of roads at the time. It must, I am sure, be in the experience of every grown-up person how common a thing it is for an individual to go for the first time on a road, and afterwards in the same district of country, to go on another road, and to be forcibly impressed with the conviction, from general appearances, that the second is the same road as that first travelled; and as the Court has been to the district, may I not ask if the features of the country round about are or are not such as could readily lead to such a mistaken impression? One of these men was not so clear about the road, but that it became necessary to take him back again, and the other merely heard the names on the morning, and may very possibly, in the confusion and his anxiety and hurry to get his saddle changed, have mistaken the information he then received. I am disposed to admit that these two men did take a ride that morning, but not on that Holland Bay-road; and when the Court brings to mind the statement that they left for the race, while yet their commanding officer and all the others were at the post-office, and that had they gone on that Holland Bay-road, the commanding officer must have seen, and would, in all probability, have stopped them, the belief becomes almost irresistible, that as the body was about to move off they took a gallop backwards on the road that leads towards the Duckenfield estate, and branches off the direct road from Golden Grove in a southerly direction, almost at a right angle. If this is not the correct account, then, painful as it is, I must ask the Court to add the names of these two men to the eight whom, when disposing of statement No. 5, I have felt it my duty to condemn. I come now to the last statement of any importance in the defence.

No. 7. That Brooks was sick and unwell to go to Holland Bay or Holland estate on the Sunday morning, and did not go. This is a collateral issue, and has been raised because of the great importance which the defence evidently attaches to the evidence of a person in a particular and different position in life to the generality of the witnesses for the prosecution. No doubt Brooks (except those who may be called the official witnesses, such as the medical men and officers) is the only witness for the prosecution of unmixed English blood, and the only one who belongs to the planting community; it is not suprising, therefore, that powerful efforts should have been made to nullify his evidence. Let us see how it has been effected. Altogether 13 witnesses have been examined as concerning him, but the number who speak to any material point is very small. I will first pass Mr. Mais, Cruikshanks, Stuart, Ford, Myers, Moyle Wilson, Chisholm, Frank McDermott, and Lowe under review. I must call attention to the time during which Brooks was away, say from 7.30. to 10.30. a.m., at the outside. Mais says that he saw Brooks at Golden Grove that Sunday, but he fixes

fixes no hour; he goes on to say, "He (meaning Brooks) did not leave Golden Grove to my knowledge during that day, and he adds, that he himself was suffering from pains, and was in the barracks the whole day." He says in generalities, "That Brooks was sick, and that he did not leave Golden Grove that day to his knowledge;" but he does not venture to go into particulars, and say that which alone is material, namely, that he saw Brooks at Golden Grove between 7 and 11 a.m. on that day, and it is quite possible that Brooks may have left and returned between those hours without his knowledge. The next is Cruikshanks; little enough it is he says; this is all: "Mr. Chisholm appointed Frances Thompson to attend to the sick; Mr. Brooks and Mr. Mais were very sick; I gave out the articles of food. I know of my own knowledge that Alvarenga was attending Mr. Brooks the whole time he was sick, for he came daily to the Great House to order such nourishment as he thought fit." There is not a word about his seeing Brooks, and although he says he knew of his own knowledge that Alvarenga was attending Brooks, still that knowledge he shows was obtained from the fact, that Alvarenga came to him at the Great House for nourishment, said to be for Brooks. Next comes Mr. Stuart, and he says, "I saw him (meaning Brooks) the Sunday morning before seven o'clock in his room, complaining of being sick; I forget whether he was in bed or not." He is then asked, "Did Mr. Brooks go out of Golden Grove that Sunday, to your knowledge?" to which he answers, "He never went out that day to my knowledge; I saw Dr. Alvarenga that afternoon attending him (Brooks)." The nearest approach then which this witness can make, is seven in the morning, when he saw Brooks complaining; but he does not remember if he (Brooks) was in bed or not; and in the afternoon, when he saw Alvarenga attending him. Of what avail is this evidence to show that Brooks was not away from Golden Grove between 7.30 and 10.30 a.m. that day. Then comes David Ford. The Court cannot forget how the witness fenced the questions put in cross-examination, and his extreme want of memory on all subjects of inquiry by the prosecution; yet all his evidence comes to, "To the best of my knowledge." Before I proceed, I must ask the Court to take with great circumspection evidence given under this very common caution, and this remark applies to the previous witnesses, for they too only speak "to the best of their knowledge." People who have had any experience of witnesses, will tell you there is a class of them who do not think it amiss to say anything so long as they are able to protect themselves by what they believe is a safeguard against the charge of wilful misrepresentation. It is a common thing to hear said by a person who has given evidence, "I may be wrong, but I did not speak positively; I only said, to the best of my knowledge and belief." Well, then, to the best of Mr. Ford's knowledge, he (meaning Brooks) remained in the barracks the whole of the next day (meaning Sunday). On his cross-examination, however, in answer to two questions, "Did you see Mr. Brooks that Sunday?" he says, "I did." Then he is asked, "When did you see him?" and he says, "I cannot state the hour; to the best of my knowledge he was in the room all day;" he himself was walking about sometimes in the yard and sometimes in the barracks: even giving him all the benefit of the best of his knowledge, this witness does not undertake to swear to that which alone is material, namely, that Brooks was not away from Golden Grove Estate between 7.30 and 10.30 a.m. that day. Myers comes next, and he says that Brooks did not leave the barracks the next day (Sunday), to the best of his knowledge; but he says, he (Myers) had no orders to remain within doors. "To the best of his recollection," he saw Brooks that morning in and about the barracks; and the man whom all the other witnesses describe as having been very sick at that time, this witness says, was walking about in and out the barracks like himself, having nothing particular to do. He, like the others, although protected by the best of his knowledge, does not venture to fix any time, or to say that it was impossible for Brooks to leave, or that he did not leave Golden Grove Estate between 7.30 and 10.30 that morning. Moyle Wilson comes next, and lest he, being young, was not up to guarding his evidence by "the best of his knowledge," it is put in the question thus: "Did Mr. Brooks go out to bring in any prisoners that Sunday, to the best of your knowledge; was he well enough to do so?" and he answers, "Not to my knowledge; he was not well enough when I saw him; that was about 6 or 7 a.m." He then goes on to say, that he was with the detachment under Adcock, Ford, Astwood, and others; therefore he could know nothing of Brooks's movements after that detachment left. Mr. Chisholm says, Brooks was sick on Saturday and Sunday; he is not asked, and does not venture to say one word about seeing Mr. Brooks on that Sunday. In cross-examination, however, he says he saw him during the day, but cannot say what hour it was. Frank M'Dermott says he left at seven a.m. to go to Rhine for beef; he saw Brooks in bed ailing before he left; he returned at one, and saw Brooks still in bed. What might have happened while he was at the Rhine, it was impossible for him to tell, and he does not. Lowe says, "I did not see Brooks go out on the 22nd, or bring in prisoners; he was not in a fit state to leave Golden Grove on the 22nd." On cross-examination, he says, he came out of his room at 10 or 11 a.m., and went back at night; he saw Brooks in the morning after he came out of his room that day in his (Brooks's) room. And in answer to a question by the Court, he fixes the time at which he saw Brooks as half-past 11. Great reliance seems to be laid upon this witness, because he is said to have been sick and lying down in a room the third from that said to have been occupied by Brooks in that same overseer or book-keeper's barracks, and that, according to the construction of the house, Brooks could not have left his room without going through the hall, nor without this witness hearing him. Now, in the first place, the statement is completely destroyed by one of the witnesses for the defence, Frank McDermott, who says there is a trap-door in that very room in which Brooks is

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said to have been, which is usually used by the servants, and by means of which one can leave the room unheard and unseen, and gain the outside. In the next, although it was attempted to show, and at first did seem that the place was like a sick house, very quiet, and that Lowe and Brooks, two patients *in extremis*, were there, not to be disturbed, and that none but the nurse and doctor had access to the well-appointed sick chambers, yet very soon was the whole of this illusion dispelled when witness after witness told that this and that and the other shared Brooks's bed with him; that the people were all day going in and out, that the building was bereft of doors or windows, that all the sheets, towels, &c., were taken away by the rebels, that these barracks were at the free use of any number of the 70 or 80 people who were on that day congregated on that estate; and the evidence winds up with the account of James Wilson, who says some rooms had six, some four, some in the hall just where they could get a place. There is no denying that all these nine witnesses give much loose evidence to the effect that Brooks was sick on the Saturday and sick on the Sunday; that he was a lazy fellow; that he did not bring in any prisoners, and that he was attended by a doctor and nurse; but all this goes for nothing; the point to be met is, was he or was he not away from Golden Grove that morning between 7.30 and 10.30? The prisoner himself has acknowledged that it is; for in his objection to my application to the Court to be allowed to re-examine Brooks in rebutter as to his alleged sickness, what does he, the prisoner say? "The matter mentioned in this application also is one which does not strictly come in rebutter at all on any main point; the point is, where he was on that Sunday there is his evidence already." This alleged inability of Brooks to leave Golden Grove is in the nature of another "*alibi*" raised by the defence. Let us test it in this way; suppose that the prisoner was on his trial for an offence committed at Holland Bay or Holland Estate on that morning, the 22nd October 1865, and that (a *primâ facie* case having been made out against him) in defence he had put these nine witnesses on the boards, who proved all they had said before this Court, could any judge charge the jury favourable to the prisoner, or could any intelligent and impartial jury acquit the prisoner on such evidence? Would it clearly establish the impossibility of the prisoner having been away between the hours stated without these witnesses knowing that he had left? Would it even leave a reasonable doubt on the point? Most certainly not; not one of these witnesses saw Mr. Brooks anywhere on Golden Grove Estate between 7.30 and 10.30 that morning; they do not cover the time; as unmistakeable as their animus is, the whole nine of them, in my judgment, they give no evidence of the least materiality. Somewhat different however is the testimony of the remaining four witnesses of the 13 who speak to this point of Brooks's sickness and presence at Golden Grove at the time when he says he was at Holland Bay and Holland Estate. I shall not quote any of the evidence of Frances Thompson and the man they call Dr. Alvarenga; it is enough to say that if they are to be believed they establish the position assumed by the defence. I will however quote shortly from the evidence of the remaining two before I make any general remarks: James Wilson, he is now a book-keeper at Golden Grove Estate. *Q.* "How often did you see Mr. Brooks on that Sunday?" *A.* "I went in there (meaning the room in which Brooks was said to have been) about three or four times; I went in about 15 minutes after seven, and after nine a.m.; I went also at one and at four p.m.; Mr. Brooks was not able to leave Golden Grove, as he was lying down sick the whole day." McFarlane sails close enough to the wind, but not, I think, so close as to make his evidence of any avail. I think we can let him pass without condemnation, and yet say he has not advanced the defence. He is asked, "Where was Mr. Brooks on that Sunday?" and he replies, "He (meaning Brooks) was in the room that day; I was ill that day, and was in the room, and he occupied the same bed with me in the room." He was not asked, and he did not say, whether or not Brooks left the room at any time during the day; the question is loose, and the answer equally so. Altogether then, I may say, it appears to me that this point, which has been so much laboured and relied on by the defence, has failed to destroy the additional support which the case for the prosecution derives from the evidence of Brooks, Hamilton, Speed, Bignall Sproul, Hunter, Brown, and Richard Roden Francis: all the vague evidence based only on expressed belief or opinions which a witness may safely venture to give, because it scarcely admits of refutation, however untrue, may be cast away; and the evidence which alone establishes a fact that can be dealt with or recognised as entailing the ordinary legal responsibilities, is that given by Thompson and Alvarenga, and Mr. James Wilson's one statement that he saw Mr. Brooks at Golden Grove at nine a.m. that day. It is quite true that all the 13 witnesses say Brooks was sick, but that is so wide a statement that the Court must see, in such a case as this especially, that it is wholly unsafe to accept it. Suppose an indictment should be preferred against any of these witnesses for perjury in swearing that Brooks was sick that morning, and it was established that he had gone to Holland Bay and Holland Estate and brought in prisoners that morning, the defence would be that the statement that he was sick was not material, and the prosecution would fail; this Court therefore must, I submit, consider only that which is material. And then, by whom is the evidence of sickness given? Take the whole 13; is there one who does not betray himself as belonging to that combination which may not inaptly be called the Golden Grove confederacy; all of them, either are or have been on Golden Grove in one capacity or another, and although they make out Brooks to be the worst character possible, lazy, worthless, untruthful (says Mr. Chisholm), and, in short, everything that is bad, yet we find, if we believe it, that they give him the best room, provide him with a nurse and doctor, furnish him with plenty of nourishment, and, in short, treat him in a way which, if we believe it, proves him to be a very ungrateful man to turn round and, according to them, at the sacrifice of truth, to involve those

those in trouble, who saved him and them and their families from the hands of rebels. But I cannot close this division of the subject without a word or two about Frances Thompson and Dr. Alvarenga; does the Court forget how that beguiled woman got through her part; how, in answer to every question, she went on telling what she did, and how Brooks was on the Sunday morning up to ten o'clock, that time having been apparently so forcibly impressed upon her to prevent her making any mistake about it, that the prisoner could scarcely get any evidence out of her respecting what occurred on the Saturday? And then the doctor, how assiduous and attentive he was to Brooks until ten o'clock that morning, paying him three visits between seven and ten, and then, strange to say, not seeing him again until seven or eight o'clock that evening. I am very much afraid I must call upon you, Mr. President and Gentlemen, to consign these three witnesses, Thompson, Alvarenga, and James Wilson, to the same condemnation as the eight already spoken of. And now a word or two about the book. To what does this evidence amount? Simply to this, that having accidentally got possessed of an old pocket or memorandum book, he (Brooks) scribbled some notes in it of occurrences during martial law, and did not scribble anything about Walton, Miles, and M'Call. Had it been shown that any entries were made in that book on or after Sunday the 22nd October 1865, there might have been force in the reasoning that Brooks would have scribbled something about what he saw of these three men, and his not having done so, would then, perhaps, have been a circumstance calling for explanation; but putting aside the fact that the book was retaken by the first finder and never seen by Brooks on or after the 22nd, there is nothing remarkable in his not having made an entry about that particular occurrence of the 22nd, seeing there is no entry of any occurrence whatever after the 21st of October 1865, which entry Brooks swears is not made by him, and signed "C. A. Brooks," his own name being Alfred Brooks, or A. Brooks. I said that, in anticipation of the defence, I would reserve my remarks on the testimony of Drs. Kerr, Fiddes, and Scott. I will now trouble the Court with a few observations about the medical testimony generally. There is scarcely any subject within the ordinary compass of human understanding or reasoning upon which the judgment of mankind can be said to be universally concurrent and immutable; not only do the most learned men differ as from each other, but individual opinions, and especially those of sincere seekers after truth, change with the light of experience; it is no wonder then that three doctors, Kerr, Fiddes, and Scott, differ so widely and so irreconcilably from three other doctors, Manners, Anderson, and Bowerbank. It is no wonder that Dr. Bowerbank is obliged to admit that he knows there are several medical gentlemen not produced as witnesses who have examined those bones and differ from him in opinion. It is no wonder then that we find Drs. Manners, Anderson, and Bowerbank holding to old and exploded opinions respecting the time required for the thorough decomposition of the soft parts of human bodies, while we find the others adopting those which modern investigation, conducted and authenticated by the ablest men, and acknowledged best authority on that particular branch of science, have proved to be the correct one. "In Europe, where his investigations were made, a body will be reduced to a skeleton when wrapped in linen, encased in a coffin, and buried at the usual depth in the earth, in a length of time varying from 12 to 18 months," says Orfila. What then may reasonably be expected of bodies committed to the earth, I cannot say buried, under such conditions as these three of Walton, Miles, and M'Call, and in a tropical climate? However, to say the least and the most of it, in this instance we have opinions equally balanced, so far as they have appeared before the Court; and all I ask about "medical opinions," without intending the slightest disrespect to any who have expressed them on either side; on the contrary, readily yielding my tribute of admiration for the profession and the devotedness of its practitioners to the alleviation of human suffering, all I ask, I say, is, that in this case you will dismiss it altogether from your consideration, and judge for yourselves as to the genuineness or falsity of the bones now lying in the engine-room of these barracks. Three witnesses more were examined by the prisoner—Drysdale, Scoltock, and James; they proved nothing, and having only named them to make the list of witnesses complete, my observations on the details of the evidence for the defence are brought to a close.

I asked permission of the Court to say a few words, at the close of my remarks, upon the evidence on the subject of the assertion of the prisoner, that this charge of the destruction of Walton, Miles, and M'Call is founded on a conspiracy. I do not understand that the alleged conspiracy is said to include the first charge, the destruction of Billy Gray. I call it an assertion, because I feel confident that it will be pronounced to be nothing more. Historically viewed, all conspiracies from Cataline's to that now in progress, the Fenian, have been established by proof of one or more overt acts, such as production of the hand-writing of some of the conspirators, discovery of the materials necessary for working out the conspiracy, under conditions which show when and by what means, and for what purpose they were put together, proof of meetings of the conspirators, written correspondence, or verbal confessions of conspirators. I do not think I need go on enumerating examples; it is enough to say, that mere assertion never yet, as far as historical evidences or modern legal experience goes, established a conspiracy. Why, then, is this prisoner to be permitted to beg the whole question; why, then, is he to be permitted to take that which is only the product of a fertile imagination as a foundation for a mass of incoherent statements which, without that foundation, in no wise meets or disposes of the charge. But the prisoner seems to me to reason against himself. The whole tendency of his defence being, that this charge is the result of a conspiracy. I think I am not dealing disingenuously with him if I say, that the irresistible conclusion of that reasoning is, that if there be no conspiracy there is no defence. I willingly accept the alternative; I readily submit this case to be so de-

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cided. Take the case for the prosecution, and take also, if you will, all the evidence for the defence, which can by any force of argument be said to go towards proving a conspiracy, and pass a preliminary judgment. Put Manning alone, or Manning and all the other witnesses, on an imaginary trial for conspiracy, and say, if they found and fetched those bones from other graves, and put them at that spot, in anticipation of this or any other inquiry; say, if Mr. Sinclair's evidence be worth anything, that from November 1865, until September 1866, when the bones were exhumed, the spot presented the same appearance, and consequently that no bones could have been put there without its attracting his observation; say that Manning and his colleagues in iniquity have spirited away Walton, Miles and M'Call, either by the perpetration of violent crime or by seducing them into their own nefarious conspiracy, and all this without being actuated by any suggested adequate and common motive; say, in short, are the witnesses for the prosecution guilty or not guilty of conspiracy—not upon the prisoner's assertion, but upon the evidence; and if you say guilty, I give up this prosecution; but if you say not guilty, then I claim that you pronounce all the testimony given in defence vanished, and the prisoner silenced by the triumph of truth and justice. The prisoner has closed his defence by reading an address: considering the length of it (and that, too, to which my own has necessarily extended), I will, as briefly as possible, advert to those few points only of it which seem to call for remark, and have not been anticipated by me; first, as respects the case of Billy Gray. Neglect is imputed to me in the non-production of the list in which it was alleged Billy Gray's name appeared; this list, when last heard of, was stated to be in the possession of the military authorities; its production formed no part of the case for the prosecution, and its existence has not been denied; further, it is objected by the prisoner, that no exhumation took place of Billy Gray's body. It is obvious that there existed not the same or any similar reasons in Gray's case as in that of the three men buried in one grave at a significantly marked spot, and where serious gun-shot fractures had been inflicted. In Gray's case there was but one body, and there was no reason to anticipate from the part of the body in which, according to the evidence, the gun-shot wound, the cause of death, was received, that it would exhibit any osseous fracture or other corroborative proof: moreover, if the prisoner thought any material evidence could have been obtained by exhuming Gray's body, it was as competent for him to bring it into Court, or exhume and give evidence of it, as he has done with that of the convict Jones; another objection of the prisoner is, that none of the witnesses for the prosecution on the first charge satisfactorily assigned a specific date of the shooting of Gray; this, I think, is conclusively done by the permit of Captain Hole, given that day, and the date appearing on it.

In the course of the prisoner's address, he adverted to a number of alleged discrepancies in the evidence for the prosecution; some of these are not to be found in the evidence, such, for example, as that one of the bodies was buried with the head towards Holland Bay, and the other two with the heads towards the post-office; again, that Wedderburn said he saw the bodies on Saturday; again, that the skulls as fitted to each set of bones do not bear out the evidence as to which of the three men received particular injuries. (The Court must remember Dr. Kerr's evidence, that no one skull could be said with certainty to belong to any particular set of bones). It would be tedious to enumerate any more instances; the Court has the evidence before them, and if they think it necessary, will be able to ascertain how far in each case the imputation is warranted. A second class of alleged discrepancies, I am not disposed to dispute, is to be found in the evidence for the prosecution, but they are of such a character as in no way to affect the stability of the case for the prosecution in its material bearings, but are rather the not unusual accompaniments of a substantially truthful statement, and the strong evidences of the absence of wilful and fallacious concert. Hear what is said by the author of the most systematic English treatise on the laws of evidence: "It has been remarked by a great observer, that 'the usual character of human testimony is substantial truth under circumstantial variety.' It so rarely happens that witnesses of the same transaction perfectly and entirely agree in all points connected with it, that an entire and complete coincidence in every particular, so far from strengthening their credit, not unfrequently engenders a suspicion of practice and concert." With this reference I leave discrepancies to the consideration of the Court.

Indirectly the prisoner in his address has referred to documents not in evidence, and consequently not strictly available as the materials upon which to base a decision in this case. I, however, shall not quote or indicate extracts of the evidence taken before another commission, to strengthen the case which I have to support; I desire the Court only to consider that testimony which is legally and orderly before it, and at once commit the entire case to their disposal, confident that the interests of justice, and the honour of our common profession will be carefully guarded; at the same time that the accusing evidence will be so construed as to secure to the prisoner the administration of law tempered with the spirit of mercy; but, in leaving this case with you, Mr. President and Gentlemen, permit me to express the confidence that, consistently with these views, the result of the inquiry which your decision will terminate, will uphold the historical chivalry of the British soldier, and excite the compassion and mercy, in the heat of battle and in the midst of death, which have been traditionally handed down to us as the glory we are to emulate.

C. F. T. Daniell,
Lieut. Colonel 28th Regiment, and Prosecutor.

Kingston, Jamaica,
1 February 1867.

RETURN to an Address of the Honourable The House of Commons, dated 2 July 1867;—*for,*

COPY

OF

THE PROCEEDINGS

OF THE

SIMLA COURT MARTIAL.

(*Mr. Brett.*)

Ordered, by The House of Commons, *to be Printed,*
22 *July* 1867.

TRIAL of Captain *Ernest Scott Jervis*, 106th Foot, by European General Court Martial, held at Simla, on the 25th day of June 1866.

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Jn. Young, Lieutenant Colonel,
Deputy Judge Advocate General at Head Quarters.

Simla, 12 September 1866.

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I.	Ledger—Officer in charge in account with Commander in Chief, from 1st August 1860 to 30th August 1863, kept by Colonel Kirby, Major Flood, and Captain Jervis.
II.	Ditto — Ditto, 1st September 1863 to 24th April 1865, kept by Captain Jervis.
III.	Ditto — Ditto, 20th March 1865 to 30th November 1865, kept by Captain Christie and Captain Jervis.
IV.	Wine and Store Book—April 1860 to December 1861.
V.	Ditto - - On march in Southern Mahratta Country, November and December 1861.
VI.	Ditto - - On march in Guzerat and Rajpootana, December 1862 to March 1863.
VII.	Wine Book, from April 1865.
VIII.	Store Book, „
IX.	Book of Tradesmen's Accounts.
X.	Bazaar Book; Abbey's.
XI.	Blank Ledger.
XII.	„ Cash Account.
XIII.	Rough Diary and Mutton Book (Bombay).
XIV.	Khansaman's Bazaar Books (3).
XV.	Wine and Store Consumption Book (Bombay).
XVI.	Bazaar Book—September 1863 to February 1865.
XVII.	„ Book—December 1864 to January 1865.
XVIII.	Sundry Book—Ditto ditto.
XIX.	Servants' Wages Book—February 1862 to April 1865.

Jn. Young, Lieutenant Colonel,
Deputy Judge Advocate General.

PROCEEDINGS of a GENERAL COURT MARTIAL, assembled at *Simla*, on Monday, the 25th day of June 1866, by order of his Excellency the Commander in Chief in India, for the trial of all such persons as may be duly brought before it.

President: 25 June 1866.

Brigadier General J. BRIND, C.B., Royal Artillery.

Members:

1. Colonel J. R. Glyn, C.B., Rifle Brigade.
2. Colonel A. Scudamore, C.B., 7th Hussars.
3. Colonel J. D. Carmichael, C.B., 94th Foot.
4. Colonel W. H. Seymour, C.B., 2nd Dragoon Guards.
5. Colonel F. A. Willis, C.B., 38th Foot.
6. Colonel W. P. Hampton, 2nd Bengal Native Infantry.
7. Colonel T. A. Carey, 40th Native Infantry.
8. Lieutenant Colonel C. A. Barwell, Bengal Staff Corps.
9. Lieutenant Colonel R. J. Hawthorn, late 2nd European Light Cavalry.
10. Lieutenant Colonel S. F. Macmullen, late 3rd European Light Cavalry.
11. Lieutenant Colonel W. Agg, 51st King's Own Light Infantry.
12. Major H. G. Delafosse, 101st Royal Bengal Fusiliers.
13. Major H. E. Iremonger, late 21st Native Infantry.
14. Major G. C. Hankin, Bengal Staff Corps.

Judge Advocate:

Major J. N. YOUNG, Deputy Judge Advocate General at Head Quarters.

Interpreter:

Major H. Le. C. Moller, 101st Foot.

THE Court assembles at the Assembly Rooms at 11 o'clock in the forenoon. Assembly.

President, Members, Judge Advocate, and Interpreter are all present.

Captain *Ernest Scott Jervis*, 106th Foot, the prisoner, is called into Court.

Captain *W. K. Elles*, Officiating Deputy Assistant Adjutant General, appears in Court as prosecutor.

The General Orders, convening the Court, nominating Brigadier General J. Brind, C.B., Royal Artillery, to be President, and Major J. N. Young, Bengal Staff Corps, to be Judge Advocate, and fixing time and place of assembly, and the Sirhind Division Orders completing the Court, are produced and read.

The names of the officers composing the Court are read in the hearing of the prisoner, who is asked by the Judge Advocate,

Captain *Jervis*: Do you object to being tried by the President, or any of the members appointed to sit on this Court Martial? Invitation of challenge.
Answer: No.

The Court is duly sworn.

The Judge Advocate is duly sworn.

The Interpreter is duly sworn.

All witnesses are directed to withdraw, and withdraw accordingly.

The charges are read and entered as follows:—

25 June 1866. Captain Ernest Scott Jervis, of Her Majesty's 106th Regiment (Bombay Light Infantry); placed in arrest, and charged as follows:

Charges.

First Charge.—With having behaved in a scandalous manner, unbecoming the character of an officer and a gentleman, while employed as aide-de-camp in charge of the household expenditure of his Excellency the Commander in Chief, in the following instances:

1st. In having at Mahasoo, during the months of September, October, and November 1865, dishonestly misappropriated to his own use, and for the entertainment of his own guests, the following wines, beer, and other stores, of the aggregate value of *Rs.* 920. 10. 8. or thereabouts, the property of the Commander in Chief, intrusted to him, Captain Jervis, for expenditure on his Excellency's account only; that is to say, 100 bottles of sherry, two bottles of port, 61 bottles of champagne, 24 bottles of sauterne, 88 bottles of claret, 114 bottles of beer, one bottle of brandy, one bottle of maraschino, one bottle of curaçoa, 67 bottles of sodawater, six bottles of lemonade, one tin of ham, one tin of bacon, one tin of tongue, two tins of salmon, three tins of oysters, two tins of sardines, one tin of giblet soup, three tins of sausages, one tin of pâte-de-foie-gras, three tins of truffles, four tins of asparagus, two tins of assorted biscuits, one bottle of vinegar, one bottle of mustard, two bottles of salad oil, one bottle of mixed pickles, two bottles of Harvey's sauce, one bottle of Worcestershire sauce, one bottle of capers, four bottles of mushrooms, one bottle of olives, one bottle of apricots, four bottles of tart fruits, one jar of plum jam, one jar of raspberry jam, one pound of tea, two pounds of coffee, and one loaf of sugar; and in having then, or subsequently, with intent to defraud the Commander in Chief, entered, or caused to be entered, part of the said articles in the account books of the household in his, Captain Jervis's charge, as having been expended on his Excellency's account.

2nd. In having, at Calcutta, on or about the month of February 1866, with intent to defraud the Commander in Chief, charged or caused to be charged to his Excellency's debit, in the account books of the household, in his, Captain Jervis's, charge, the sum of 700 rupees, or thereabouts, the same being the cost of his, Captain Jervis's, own private table expenses at Mahasoo during the months of September, October, and November 1865.

3rd. In having, at Calcutta, or Simla, or both these places, between the 16th of December 1865 and the 25th of April 1866, dishonestly misappropriated to his own use the following articles of stable necessaries and horse furniture, of the aggregate value of 275 rupees, or thereabouts, ordered and received by him, Captain Jervis, from Messrs. Monteith & Co., of Calcutta, on account and at the cost of his Excellency the Commander in Chief, and the property of his Excellency; that is to say, six horse brushes, seven horse blankets, six horse body rollers, six stable collars, six rope reins, seven single heel ropes, two suits of horse clothing, one rosette and brow-band.

4th. In having at Simla, in or about the month of April 1866, with intent to defraud the Commander in Chief, charged under the head of bazaar expenses to his Excellency's debit, in the "bazaar expenses" account book of the household, in his, Captain Jervis's charge, the sum of *Rs.* 47. 14., the same being the cost of his, Captain Jervis's private expenses, from the 25th to the 29th March 1866, inclusive, while *en route* from Calcutta to Simla, and not in attendance as aide-de-camp.

Second Charge.—With having at Simla on the 14th of May 1866, neglected to obey the order of his Excellency the Commander in Chief, communicated to him through the adjutant general's department, to produce before a military court of inquiry, ordered to investigate the accusations in the first and fourth instances of the first charge, certain books, accounts, and vouchers, the property of the Commander in Chief, in his, Captain Jervis's possesion, the production of which was essential to the clearance of his character as an officer and a gentleman.

Third Charge.—With having at Simla, on the 22nd of May 1866, neglected to obey the order of his Excellency the Commander in Chief, communicated to him by the military secretary, to attend a committee of audit, which had been assembled by order of his Excellency, for the purpose of testing the accounts kept by Captain Jervis on behalf of the Commander in Chief, the said committee having been ordered for the purpose of affording Captain Jervis an opportunity of relieving himself from the imputations on his character as an officer and a gentlemen contained in the first and fourth instances of the first charge, with which he, Captain Jervis, had been made acquainted at a Court of Inquiry held on the 14th of May 1866.

Adjutant General's Office, Head Quarters,
Simla, 14th June 1866.

Additional Charge.

Fourth Charge.—With having at Simla, on the 9th of June 1866, he being at the time in military arrest, imposed by order of his Excellency the Commander in Chief, disobeyed the lawful command of his superior officer, Colonel D. M. Stewart, deputy adjutant general, to deliver to him his (Captain Jervis's) sword.

By order of his Excellency the Commander in Chief,

(signed) *H. E. Longden,*
Colonel, Adjutant General.

Adjutant General's Office, Head Quarters,
Simla, 20 June 1866.

FIFTH CHARGE.—With conduct unbecoming the character of an officer, and to the prejudice of good order and military discipline, in having at Simla, on the 22nd June 1866, in a letter of that date written and sent by him, to the address of Colonel Longden, C.B., Adjutant General, made use of the following highly insubordinate expressions in regard to the orders of his Excellency the Commander in Chief for his, Captain Jervis's, appearance before a general court martial: "In reply, I have the honour most solemnly and emphatically to protest against this proceeding, as unwarranted by law, principle, or justice; and to state, with every respect to his Excellency, that nothing short of physical force will induce me to be present at the court; and that if dragged there as a prisoner by violent means, I shall take no part in the proceedings, save to reiterate before the court my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility he incurs by consenting to take part in the proceedings." 25 June 1866. Additional Charge.

By order of his Excellency the Commander in Chief.

(signed) *H. E. Longden*,
Colonel, Adjutant General.

Adjutant General's Office, Head Quarters,
Simla, 24 June 1866.

ARRAIGNMENT.

By *Judge Advocate*.—How say you, Captain Ernest Scott Jervis; are you guilty or not guilty of the charges preferred against you? Arraignment.

The prisoner, having first requested and obtained permission for the presence in court as his friend, of Mr. W. Tayler, in reply, proceeds to read an address, which it appears he terms a protest.

The court is closed.

The Court decide to inform the prisoner that they will receive any plea couched in respectful language to the jurisdiction of the court martial, on any or all of the charges brought before it: that they will not receive a protest at this or any future stage of the proceedings; and that any action on his part at present must be confined to pleading to the charge either simply guilty or not guilty, or in bar of trial; and that he must defer any explanation of the facts alleged in the charges until his defence.

The prisoner states, in reply: "I decline to have anything to do with the proceedings. I wish to state that none of my witnesses have been summoned."

The Judge Advocate informs the Court that no application has been made to him to summon any witnesses; that he is aware that a list of witnesses has been furnished to the Adjutant General; that these were all distant witnesses, not within the reach of any summons which the Judge Advocate could issue under the 13th section of the Mutiny Act; that the prisoner has been informed that the trial must be proceeded with. On the close of the prosecution the Court must decide what steps they will take with regard to any witnesses the materiality of whose evidence can be shown to them by the prisoner.

The prisoner states: He is prepared to show the law in this case, and the Court inform him that they will receive any statement on this subject he will submit.

The prisoner produces a written statement, which is read.

The Court consider some of the expressions objectionable, and the court is closed.

The Court decide to receive the address, as read.

The address is entered:—

"I have, from the first commencement of the painful controversy which has led to the assembly of this court martial, persistently, and on principle, protested against the lawfulness of the action taken by his Excellency the Commander in Chief, for the obvious reason that his Excellency is, in regard to all and each of the original charges and imputations raised against me, to all intents and purposes, and beyond all contradiction, a private prosecutor, seeking the recovery of his private property, supporting the repudiation of his private debts, due to me on private accounts.

"It is not in wanton or unreflecting disobedience, nor in disregard of my legitimate military duty, but on the principle distinctly recognised, and clearly laid down in standard works on military law; viz., that it is 'lawful to disobey an unlawful command of a superior;' that I have throughout respectfully declined either to attend the committee, or bring the accounts before the Court of Inquiry; and it is in maintenance of this principle, and in reliance upon these authorities, that I have ventured to decline to attend this court, except upon compulsion, when I found that in addition to the original illegality of the procedure pleaded by me, the prosecutor, in violation of the law, had ordered my trial, while he refused to allow my witnesses to be summoned.

"I need scarcely remind you, sirs, that this is the latest interpretation of the law on the subject of military obedience, and that this interpretation is supported by many well-known precedents; the dictums of Chief Justice Bushe, that 'no subject of the King is bound to obey an illegal order; and if an officer give an illegal order, those who obey him are not exempt;' never having been contradicted, I still, at this eventful crisis, persist in that plea, and desire now solemnly and emphatically to repeat it, before the president and members of this court now assembled, entreating you, sirs, to consider carefully, dispassionately, and on your consciences, without respect of persons, and in the fear of God, whether this be true or not, and whether, if it be, you yourselves are subserving the honour of the army, the cause of true military discipline, the interests of society, or the ends of justice,

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justice, in consenting to use the powers committed to you for great public purposes, in aid of the private and personal objects of the prosecutor, whatever be his official rank. Nay, rather, whether you are not yourselves incurring grave and indefinite responsibilities, if you participate in a procedure which may eventually prove to be unlawful, at all events without previous careful and conscientious investigation of the whole question.

" But, gentlemen, while I thus reiterate, and press upon your attention, the plea which I have consistently made throughout, and the principle upon which it has been made, I wish also to add a special plea, in regard to the proceedings which have taken place since the order for convening this Court has been issued.

" When I received intimation of this order, I submitted, according to universal custom and the rules of law, a list of my witnesses, whose evidence I declared, and hereby again conscientiously and truly declare, is necessary for my defence; some of them officers formerly on the staff of his Excellency, and who superintended, as I have done, his Excellency's private expenditure, and who, when on their oath, will be compelled to disclose the system on which that expenditure has for years past been regulated, and thus at once expose the impossibility of adducing charges against me, while the household accounts are unclosed and incomplete; while they will at the same time prove that his Excellency has for years past sanctioned and maintained the very practices which he has laid to my charge. But the prosecutor (himself the plaintiff), now personally interested in achieving my ruin, has assumed to himself the power of refusing to allow my witnesses to be summoned, or any steps to be taken to ensure their attendance, thus securing, if you, gentlemen, will tolerate such a procedure, in his own private and personal interests, an *ex-parte* trial, and seeking to accomplish his own triumph, and my defeat, while he deprives me of all possibility of rebutting his charges.

" And the prosecutor has done this on the ground which he has taken upon himself, in the absence of all inquiry, to assume; viz., that those witnesses have been summoned for the purpose of defeating justice; thus in his own cause, and for his own advantage, prejudging my motives, and deliberately depriving me of my established right.

" Sirs, when a late Commander in Chief, Sir William Gomm, was summoned as a witness for the defence by a subaltern, in one of Her Majesty's regiments, his Excellency was himself, as witness, compelled to submit a respectful petition to the Court, praying the Court to satisfy itself that his Excellency's evidence was necessary, before it enforced his attendance; a course of procedure which shows that it is for the witness, not for the prosecutor, to raise such objection, and when raised, for the Court, and not the party interested, to decide upon it.

" As it is, the prosecutor, I submit, has now taken the law into his own hands, superseding the power and privileges of the Court. He has impugned my motives, and, overriding the declared duty of the Judge Advocate General, which is ' to summon the witnesses of both parties,' he has deprived me of all means of defence, and has now forced me before this Court to undergo what is called a trial, while he excludes by his own act the evidence which alone can make a trial aught but a mockery.

" I therefore solemnly and earnestly plead against this, as against all the other proceedings of the Commander in Chief; I plead against it, as an act subversive of the first principles of justice, as utterly unwarranted by military rule or the articles of war.

" I submit to you, sirs, that to allow such an exercise of arbitrary power in any man in the world, whatever be his position, or whatever his rank, is to establish an irresponsible tyranny of the most dangerous kind.

" I call upon you all, gentlemen, to consider these things, and respectfully decline to take any part in the proceedings save under protest, until the law is obeyed, and justice satisfied, by summoning my witnesses in due course.

" Under the circumstances of the case, and wishing to avoid any occasion of offering direspect to his Excellency, I will, with the Court's permission, confine myself, 1st, to protesting solemnly against my being deprived of witnesses, upon whose testimony my defence will mainly rest; and 2nd, to reading, with the Court's permission, the following extracts from Simmons on Military Law; a work, it will be acknowledged, of standard authority.

" Simmons on Courts Martial, 5th edition, pages 227–229, clauses 595, 596, foot note 8 to p. 229; foot note 5, p. 227.

(signed) " *Scott Jervis*, Captain,
" 106th Light Infantry."

The Judge Advocate offers the following remarks:—The prisoner's statement contains what are, in substance, three pleas, in bar of trial.

1st. That the Commander in Chief being the person who is represented to be injured by the facts alleged in the first charge, and seeking by this procedure to evade payment of just debts, was barred by justice from convening the court.

2nd. That the orders he is charged with disobeying were illegal.

3rd. Absence of witnesses summoned by himself, caused by the action of the Commander in Chief, the actual prosecutor, overriding the duties of the Judge Advocate General.

On the first plea I submit, that while the Commander in Chief is the person represented to have been injured by the facts alleged in the first charge, the Court, and not the Commander in Chief, are the judges whether those facts are established or not; and, further,

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further, that the procedure of the Court gives them no power to award recovery of the losses, should they consider such to be established.

2nd. On the second plea, doubtless, if the orders were illegal, the prisoner was not bound to obey. On this point it appears that the Court can give no opinion until they have heard the evidence on both sides.

3rd. As regards the absence of witnesses, I have to observe, that it has been ruled by the Judge Advocate General of the British Army, that the summons of the Judge Advocate General of the Bengal Army only reaches to places where troops of the Bengal army are serving; that no witnesses named by the prosecutor, to the best of my belief, was in the Bengal Presidency, the nearest being at Bombay, and others in Europe. The Commander in Chief therefore, having, as the prisoner has stated (not considering the evidence of these distant witnesses material, judging from their absence from the places referred to in the charges), decided to proceed with the trial; the Court, when they shall have heard the case for the prosecution, and any explanation regarding the expected evidence, will be in a position to decide what course substantial justice will require them to pursue.

The prisoner, having obtained permission, hands in a written statement, which is read and entered:—

"First. That my objection is, that the whole matters were private and personal. That the acts from which the prosecution has arisen in no respect form part of my military duty, and that, too, on the face of them; and that no evidence adduced as to the details of those facts can alter their original character. That being private and personal, they form no basis for any military action whatever, of a court of inquiry, committee, or court martial, and that such action being illegal, this Court ought first to inquire into and decidethis point, before it consents to proceed with this trial.

"As to the witnesses, the Judge Advocate General admits the very act which I complain of as being wholly illegal, and constituting the supersession and disregard of the powers of this Court, the prosecutor himself refusing to allow my witnesses to be summoned, and that the Judge Advocate General has neglected his duty, which, by the law, as laid down in standard works, is 'to summon the witnesses of both parties.' That if there is any difficulty in summoning the witnesses named, I, the prisoner, ought not to suffer; and that even if the difficulty of legally summoning them be insurmountable, this Court is in common justice bound to take steps to do so; and that it will be unfair and unjust to me that any evidence should be recorded against me till such efforts have proved to be abortive. In this matter I throw myself on the protection of the Court."

The Judge Advocate asks leave to enter a remark on the above statement.

The Judge Advocate observes as follows:—This last statement raises a fresh plea, to the effect that the facts referred to in the first charge being of a private nature, no military charge can arise upon them. I submit that a proper charge is preferred; whether it can be proved or not is another matter. It is prepared under the 79th Article. This is, for officers, the counterpart of the 81st Article for soldiers, under which soldiers can be charged with disgraceful conduct of a fraudulent nature, although the alleged fraud be on some matter totally apart from their military duty.

The prisoner makes a further statement, as follows:—

In reply to this, I merely submit that the Judge Advocate General's argument begs the whole question. Scandalous conduct cannot form an article of charge, unless connected with a specific proved act; that in these charges no act whatever is proved, and no private gentleman can assume, in matters in which he is personally and privately interested, that any act is proved until it has been submitted to the test of evidence legally taken.

That no evidence whatever has been taken in this matter. A menial servant has been examined behind the prisoner's back, by the prosecutor himself, and, as I submit, an illegally convened court of inquiry on these private matters has given the prosecutor its opinion after knowing and reading the prosecutor's own opinion.

That "scandalous conduct" must rest on a sounder basis than this, or it might be imputed at every turn of an officer's life, on the bare suspicion or *ipse dixit* of a private enemy.

That the prosecutor, if he suspected his friend and aide-de-camp of any dishonesty in private matters, should first have submitted the question before the Civil Court, or other impartial tribunal, and then, if any delinquency were proved, base upon it, if he chose, a charge of scandalous conduct.

The Court is closed.

The Court decide to inform the prisoner that his several pleas in bar of trial are disallowed, the Court reserving to themselves to decide, after the close of the prosecution, whether any action on their part should be taken towards procuring the attendance of distant witnesses. The prisoner is accordingly required now to plead guilty or not guilty.

The Court is opened, and the prisoner informed as above.

The prisoner now pleads, under protest, Not Guilty.

Plea.

25 June 1866. Captain W. K. Elles, the prosecutor, produces a written address, which is read and entered :—

Prosecutor's Address.

PROSECUTOR'S ADDRESS.

" Mr. President and Gentlemen,

" Before submitting to you the evidence in support of the charges on which the prisoner, Captain E. S. Jervis, of the 106th Bombay Light Infantry, stands arraigned, it will be necessary for me to allude to the train of circumstances which have compelled the Commander in Chief to take the painful course of assembling this Court to investigate the conduct of an officer so lately a member of his private family and possessed of his entire confidence and esteem.

" The events which immediately preceded the arrest of Captain Jervis on the present charges, are briefly these. About the beginning of May last the Commander in Chief had, for, in his Excellency's opinion, a sufficient cause, in a matter connected with his, Captain Jervis's duties, as aide-de-camp in charge of the household, deemed it necessary to inform that officer that he dispensed with his services in future. The circumstances of the misconduct here alluded to, it is unnecessary to detail; indeed, it is not permitted to me, as prosecutor, to enter upon this matter which is not included in the charges. Suffice it to say, that for certain irregularities, Captain Jervis was removed from the personal staff, he being permitted to draw his pay as aide-de-camp up to the end of May, in order that he might have time to complete his accounts at his leisure, and render them in a manner satisfactory to himself and the Commander in Chief.

" His Excellency now thought the matter ended, but it came to his notice that Captain Jervis questioned the justice of his decision; and he therefore ordered a Special Court of Inquiry, composed of officers unconnected with his Excellency's household, to hear the whole evidence in the matter, and to record an opinion whether the alleged misconduct, for which the removal of Captain Jervis from the personal staff had taken place, was sustained or not. The Court of Inquiry, the impartiality of which Captain Jervis has since thought proper to impugn, was composed of the Deputy Adjutant General, the Deputy Judge Advocate General, and the Deputy Quarter Master General, and the Court sat on the 10th and 11th May, Captain Jervis's removal from the staff having taken place on the 7th. Captain Jervis at first declined to attend the Court, but on the grave consequences of his refusal being pointed out to him, he at length consented to do so, without, however, taking any part in the proceedings, or offering any explanation of the matter under inquiry. To complete the record of this introductory matter, it may be said that the Court ratified, in the fullest sense, the Commander in Chief's decision, thereby justifying his military action in removing Captain Jervis from his staff.

" The circumstances of the case up to this time, although necessary as an introduction, have been recorded in general terms, as foreign to the matter now before the Court, and it being inadmissible to adduce evidence in their support, I now come to the events which form the subject of the present charges.

" It was about the time of the sitting of the Court of Inquiry on the 10th and 11th of May that some of the matters mentioned in the first charge were brought to the Commander in Chief's notice. The *primâ facie* case seemed to be so strong, and Captain Jervis's conduct had been such previously, that his Excellency saw the necessity of at once submitting the new matter to be investigated by the Court of Inquiry, which had adjourned its proceedings on the 11th of May. The case for investigation was this; it suddenly transpired in his Excellency's establishment that certain occurrences had taken place last autumn, and during Captain Jervis's late journey from Calcutta in March, which threw a grave suspicion on his honesty. After his return from Calcutta to Simla, his Excellency was anxious to see his accounts, as he was conscious that for some time past these matters had entirely escaped his attention. Captain Jervis, in reply to a request to submit them, wrote to Sir William, stating that all the house books were complete *to date*, the two last words being underlined. This note is dated the 20th of April. Sir William, being much occupied, requested Lady Mansfield to be good enough to examine the accounts, and an application was made to Captain Jervis to submit them. In reply he wrote as follows on the 24th of April :—'I will complete a statement such as you would like to see when the boxes with the accounts, bills, &c., arrive, and let you see it.' Both these notes will be laid before the Court. The discrepancy between the statements was not observed at the time, but when viewed in the light of subsequent events, it came to be suspected that there might be unwillingness on the part of Captain Jervis to produce his accounts. Gradually the suspicion was developed into conviction, and at length, as one matter after another came to light, it became painfully evident that a fraud had been committed.

" It was known that, in the months of October and November last, Captain Jervis was living at Mahasoo, in a house the property of Lord William Hay. In fact, this was his residence, the greater portion of his time being spent there, except when in actual attendance on the Commander in Chief. Captain Jervis on several occasions entertained his friends at Mahasoo, the parties, in some instances, amounting to 12 or 14 persons. On one or two occasions he was joined in giving these entertainments by Captain Harbord, also an aide-de-camp on his Excellency's staff.

" It now transpired that the supplies for these entertainments were sent out from the Commander in Chief's cellars and store-rooms, and that the table was provided by his Excellency's khansamah. The cellar and store books showed that large expenditure of

wines

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wines and stores were entered against dates on which no large entertainments had been given at the Commander in Chief's house. The abdar, who was at that time in charge of the cellar and kept the key, deposed to large quantities of wine and beer, &c., having been sent on various occasions to Mahasoo, by Captain Jervis's order. These facts will now be proved by the testimony of the khansamah and the abdar, and there is abundance of corroborative evidence in support of the truth of their statements. It will be shown that there had been no acknowledgment on Captain Jervis's part of these wines and stores having been taken for his own use, and that he expressed no intention of making any refund on their account, either in money or in kind. It will be shown also that the large quantities of wines sent out to Mahasoo, have not been written off on the books, and that the expenditure did not therefore purport to be on account of the Commander in Chief. On the other hand, it will be seen that on the 2nd and 4th of October there are entries of consumption which it was impossible could have taken place on his Excellency's account, and of which no satisfactory explanation has been obtained.

"Captain Harbord will depose that in October last a cheque for 220 rupees was drawn by him in favour of Captain Jervis, and appropriated by the latter on account of his (Captain Harbord's) share of the Mahasoo entertainments; and it will be seen, on examination of the cash account closed up to the end of November, that no corresponding credit was made to the account of the Commander in Chief. This cash account, purporting to be a complete account for the three months, September, October, and November, was the only book produced to the Court of Inquiry by Captain Jervis. The entries in this book show no refund on account of any of the matters treated of in the first charge. An examination of the house books, also, which were stated on the 20th April to have been made up to date, will show that no refund in kind has taken place on account of wines and stores used at Mahasoo.

"It will be proved to the Court, by the evidence of Sir William Mansfield, whom I shall take the liberty of calling to speak to these facts, as also by that of the officers of the personal staff, that the use of wines and stores, such as that now adduced, by the officer in charge of the household, was not only wholly unauthorised, but was contrary to the established custom of his Excellency's staff, and that no such practice had ever before been heard of.

"In support of the second instance of the first charge, the khansamah will depose that the bill for the table supplied by him at Mahasoo, was kept in a separate account; that this account remained unpaid for a considerable time; and that in the month of January or February, shortly before his dismissal at Calcutta, he, by direction of Captain Jervis, included this cost, together with sundry other expenditure, on Captain Jervis's private account, in the general bills submitted on account of his Excellency the Commander in Chief.

"With respect to the third instance of the first charge, it will be proved that large quantities of horse clothing and stable gear were ordered by Captain Jervis from Messrs. Monteith & Co. during the course of last winter, in the name of the Commander in Chief; that these orders exceeded the requirements of the Commander in Chief's horses; that portions of the clothing so received were used by Captain Jervis for his own horses, and retained by him.

"It will also be shown that no refund has been made, and that no intention to make a refund has been expressed to anyone connected with the Commander in Chief. On the contrary, when relieved by Major Gordon of his charge of the stable in April last, Captain Jervis informed that officer that a large bill was due to Monteith, but without the slightest intimation, either direct or implied, that any of the articles, which he knew would be included in this bill, they having been ordered by him in the Commander in Chief's name, had been acquired from the tradesmen for himself, or appropriated to his own purposes.

"With regard to the fourth instance of the first charge, it will be proved by the evidence of the steward, Abbey, that Captain Jervis and he travelled up to Simla together from Calcutta, but not in attendance on the Commander in Chief. That he, Abbey, paid the hotel bills and other small sums on the road, including Captain Jervis's own expenses. On arrival at Simla, Abbey asked Captain Jervis how these sums were to be charged, and received a distinct order to enter them in the house books of the Commander in Chief as 'bazaar expenses.' The several entries on the corresponding dates were accordingly made in a book which will be produced to the Court, and it will be seen that Captain Jervis's initials are affixed as a voucher of the correctness of these items.

"To complete the evidence on this instance, it will be shown that such a practice was not only unauthorised, but was totally opposed to the custom of his Excellency's staff. On the contrary, it will be shown that on various occasions lately, the aides-de-camp have paid their own hotel bills, even when in actual attendance on the Commander in Chief, the expense of their dinner alone, when dining with the Commander in Chief, being defrayed by his Excellency. The circumstances of the present unauthorised charge to the Commander in Chief, forbid the belief that any refund was intended.

"This will complete the case in support of the first charge. Each individual instance, when viewed separately, must be regarded with grave suspicion; but the strange concurrence of facts in every department of the household under the prisoner's charge, afford so remarkable and complete a proof, as to shut out, when taken in conjunction, the hope that might have been admitted in a solitary instance, of the possible absence of dishonest intention.

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"Thus, in the case of the wines and stores alone, should no disproof of the allegation be offered, the Court might be willing to admit an assurance on the part of the prisoner that no fraud was intended. But then there would remain the matters of the khansamah's bill, the horse clothing and the hotel bills. The absence of intention which might have been urged in a single instance, it becomes impossible to accept in all.

"In the second instance, viz., that of the khansama's bill, the presumption is so strong as to be almost conclusive of guilt. There is a maxim of law to the effect that all presumptions may be legitimately made against one who withholds or destroys evidence. Now, in this case, not only is the evidence necessary to prove his innocence, withheld by the prisoner, but it will be shown that this very evidence, viz., all the khansamah's vouchers and papers including Captain Jervis's own notes of hand, the property of the khansamah, and required by him for his own protection, were seized by the prisoner and have never been restored.

"Again, the presumption of guilt in withholding the papers the prisoner was repeatedly ordered to produce to the Court of Inquiry, became greatly aggravated, when it is considered that these papers are actually the property of the Commander in Chief, and that the prisoner has no legal right to them, and retains them in defiance of all authority.

"These facts taken in connexion with the implicit confidence placed in his late aide-de-camp by the Commander in Chief, the very cursory and superficial examination, it was his custom to give to his accounts, and the opportunity of misappropriation thus afforded, must inevitably lead to the conclusion that nothing short of actual fraud was intended, as well as committed by the prisoner.

"The evidence in support of the second and third charges it is unnecessary to detail. In each case the delivery of the order will be proved as well as the failure on the part of the prisoner to comply with it.

"The fourth charge will be proved by the deputy adjutant general, whose lawful command to deliver up his sword, was directly and distinctly disobeyed by the prisoner. The circumstances of the interview between Captain Jervis and Colonel Stewart, who proceeded in person to the prisoner's quarters to repair the omission to demand the sword when first placing him under arrest, will be given to the Court; and Major Innes who was called by Captain Jervis as a witness of the interview, will appear to depose as to what occurred on the occasion.

"Such, Gentlemen, is an outline of the evidence on which the case for the prosecution rests, and which the Commander in Chief, after due deliberation, has determined to submit to a general court martial. Up to a late date it has been the earnest hope of the Commander in Chief that the acceptance on the part of the prisoner of the repeated opportunities afforded him of clearing his character would have enabled his Excellency to dispense with the services of a general court martial. Grave as were the imputations against the prisoner, it was possible that they might admit of explanation. Could it even have been shown that indiscretion alone had been committed, that the irregularities complained of had not arisen out of fraudulent intentions, the Commander in Chief, in consideration of his long-continued friendly relations with his former aide-de-camp, would have gladly allowed the matter to rest without recourse to a public tribunal.

"These were the feelings that prompted his Excellency to repeat, in more than one form, the opportunity accorded to every officer who stands charged with a military offence of relieving himself from the imputations against him. It is of course open to the accused, on appearing before a Court of Inquiry, either to offer an explanation of his conduct, or to intimate that he reserves his defence for a Court, before which the evidence shall be given upon oath. But it is not permitted to an officer to call in question the authority of his commanding officer, whoever he may be, to investigate before a military court such portions of his conduct as are alleged to be in breach of the Articles of War. Had the prisoner complied with the order to produce to the Court of Inquiry the books and accounts of the Commander in Chief, or had he come to the committee subsequently formed, and offered the explanations required by that committee, it is possible that the present trial might have been avoided. Had there even been found in the books now in our possession the slightest sign that any recovery was to be made on account of the abstracted property, prosecution for scandalous conduct might not have taken place. Although his Excellency would have deplored the great irregularity, with its consequent misconstruction, to the disfavour of the prisoner, he would have been only too willing to have accepted the slightest pencil mark as evidence of an honest intention. But the Court will readily see that, in the absence of any explanation of the alleged dishonest conduct, and the continued refusal of the prisoner to offer any explanation, there was no option left to his Excellency as to the course he was at liberty to pursue. Although the Commander in Chief might have wished to pass over in silence the misconduct of a former member of his staff; although it might have saved him much trouble and annoyance to dismiss the report unnoticed, it is clear that his duty prevented him from permitting an officer, resting under the imputation of dishonest conduct, to rejoin his regiment until the charges against him had been cleared up in a satisfactory manner. But, in fact, no possible solution of the prisoner's conduct has presented itself, and the perfect concurrence of the evidence from all the various sources, forbids the admission of any hope that such can exist. It has become impossible to avoid the conclusion that fraud has been committed,

and

and it is thus the imperative duty of the Commander in Chief to bring the prisoner to trial. 25 June 1866.

"With regard to the tribunal by which the charge should be tried, his Excellency was advised that it was competent for him to adopt one of three courses:

"First, to submit the matter to a civil court on a criminal breach of trust.

"Secondly, to arraign the prisoner before a general court martial, on a criminal charge, under the 100th section of the Mutiny Act; and,

"Thirdly, to frame a military charge for scandalous conduct, unbecoming the conduct of an officer and a gentleman, to be tried by a general court martial.

"In selecting the latter course, the Commander in Chief, being the person affected by the prisoner's alleged misconduct, has been guided by the unanimous opinion of his military advisers, and he has, according to the power with which he is vested, restricted the charge within the limits of a purely military offence.

"The issue of this charge is clearly defined. It is alleged in the preamble, that the prisoner has been guilty of scandalous conduct unbecoming the character of an officer and a gentleman. If, after a due consideration of the evidence in support of the several instances, you find that the allegation is proved, the sentence prescribed by the 79th Article of War is, that the prisoner shall be cashiered. The law permits of no option to the Court. The commission of an officer convicted of fraud is thereupon forfeited, it being clear that he could not be permitted to rejoin his regiment and associate on equal terms with officers and gentlemen.

"The second and third charges have arisen out of the neglect of the prisoner to comply with the orders, duly communicated to him, to produce, in the first place, the books and accounts of the Commander in Chief to the Court of Inquiry, such being necessary for the clearance of his character from the imputation of dishonesty, and, in the second place, to attend the committee of audit, in order that he might be asked to afford the explanation required by them. The issue of these two charges is, whether an officer who has repeatedly disobeyed orders issued to him in strict accordance with military law and usage, to enable him to clear his character, before recourse is had to such a tribunal as this, has not been guilty of such absolute insubordination and disobedience of orders as to show that on such account alone his dismissal from Her Majesty's service is required for the due consideration of military authority, according to the Mutiny Act and Articles of War.

"The fourth and fifth charges would appear to put the seal to the prisoner's determined contumacy and disobedience of lawful military command. It is of course well known to all the officers of this Court that it is the long-established custom of Her Majesty's services, both in the army and navy, to require the surrender of an officer's sword when he is placed in arrest, such surrender being the outward sign that he is no longer in the performance of military duty, but awaiting trial, or such other disposal as may be ordered by his military commander.

"It may be that the point of fact of demanding the surrender of a sword is a matter of little consequence, but the circumstances of the interview of the Deputy Adjutant General with the prisoner are of great importance, as being declaratory of his intention and determination to deny the force of military authority, and the obligation of lawful military command, whatever orders may be given, and whatever their occasion.

"The nature of this conduct is again seen still more strongly in the refusal of the prisoner to be tried. Supposing him to be absolutely innocent of the charges alleging fraud, this does not afford the slightest excuse for an example of contumacy and disobedience of lawful command, which is probably without parallel in the history of the British army."

MINUTES OF EVIDENCE.

First Witness for Prosecution.

General Sir W. MANSFIELD, K.C.B., Commander in Chief, is called into Court, duly Sworn, and Examined as follows, in chief.

Sir *W. Mansfield*, K.C.B.
25 June 1866.

HAS Captain Jervis been employed on your Excellency's staff, and in what capacity?—He has been one of my aides-de-camp for some years.

Was he in charge of your Excellency's household, and between what dates?—He assumed charge of my household in this Presidency about the 1st September last, and he held charge until about the end of April last.

Was Captain Jervis in exclusive possession of all account books, bills, receipts, vouchers, &c., connected therewith; or did the duties he was directed to perform require that he should be in possession of all these documents?—Yes; some important old account books were found yesterday, which until yesterday I had supposed to be in Captain Jervis's possession.

When Captain Jervis was first entrusted with the care of your Excellency's household, did he recognise and undertake this charge as a part of his duties as aide-de-camp?—

The prisoner objects to this question as leading.

The prosecutor puts it to the Court to allow or disallow it.

The Court allow it.

Witness.] Yes.

Has Captain Jervis ever placed upon record an acknowledgment of his duties as aide-de-camp, as relating to the household?—Yes.

Has your Excellency ever seen the letter handed to you; is it in the handwriting of, and signed by the prisoner?—Yes.

The letter is read by the Judge Advocate and entered:—

"Sir, "Simla, 16 April 1866.

"I am in receipt of your letter of yesterday's date, as also of a memorandum you enclosed, of his Excellency the Commander in Chief's, directing me to understand that I am to continue in charge of Sir William Mansfield's establishment, as a military duty.

"You will oblige me by conveying to the Commander in Chief an assurance on my part, that I very much regret that I should have caused his Excellency any annoyance with reference to my holding this charge, which I now look upon in a different light from that in which I looked upon it till very recently.

"It was indeed far from any intention of mine that anything I may have written, should have been so interpreted as to be the cause of a result, no less annoying to myself, than I am informed that it has been to his Excellency Sir William Mansfield.

"I have, &c.
(signed) *Scott Jervis*,
"Captain."

"Major F. R. S. Flood,
Military Secretary to his Excellency
the Commander in Chief."

Did you understand from this letter that the prisoner was aware that the duties of the household as held by an aide-de-camp were military duties?—Certainly.

Will your Excellency give reasons for regarding the several household and social duties on which your aides-de-camp are employed as a part of the military duties attaching to the appointment of aide-de-camp?—When I reorganised my staff on coming to this command, I drew up a memorandum of rules for the guidance of my aides-de-camp in which I constituted my Military Secretary Commandant of my personal head quarters; to whom all points of petty difference might be referred without troubling me. If agreeable to the Court it will save time and me inconvenience if I hand in a copy of this memorandum. I was informed by the Military Secretary that these rules were communicated to all my aides-de-camp.

The Witness produces the memorandum referred; which is read, marked A, and appended.

Has your Excellency been in the habit of examining your accounts carefully?—No.

How did the prisoner account to you for the expenditure on your Excellency's account?—I don't think I have had any account from him for the last six months, except a book which was produced at a Court of Inquiry. He has once or twice shown me an account book, which I did not examine, but merely looked at an item or two which he wished to point out.

Supposing irregularities to have existed would the examination given to the accounts shown you, have necessarily detected those irregularities?—Certainly not; unless my suspicion had been previously excited.

Was the prisoner always treated with absolute confidence by you until a recent date?—Yes.

What was your impression as to the manner in which the affairs of your household were conducted by the prisoner?—That they were conducted in a proper and economical manner.

The Court rises at five minutes before 4 o'clock, p.m., and adjourns until 11 o'clock to-morrow forenoon.

Second Day.—Tuesday, 26th June 1866.

The Court re-assemble at the same place and hour, President, Members, and Judge Advocate, are present.

The prisoner and prosecutor appear in Court.

The examination in chief of the 1st witness is continued.

General Sir W. Mansfield, K.C.B., Commander in Chief, is Examined on his former Oath.

Sir *W. Mansfield.* K.C.B.

26 June 1866.

After your Excellency arrived at Simla, did you examine your accounts?—I wished to examine them, but the opportunity was not afforded me.

Will your Excellency explain why you had not an opportunity?—About the 19th April I wrote a note to the prisoner expressing a wish to see the books. I think it was the next day that I got an answer from him, which is this:—

"My dear Sir William,

"All the house books are complete to date. At any time that you would wish to go over them, I shall be happy to attend on you for the purpose. The general statement of accounts you have seen to a recent date. The other shall be completed, and shown to you very shortly.

"There is full work for one clerk in the establishment. I would gladly learn from you that one had been told off for the duty. I could not hold out a hope that Abbey will be able to continue to act as clerk, as well as do his other work. Attention to the one duty can only be given by neglecting the other.

"The books, which you can see at a moment's notice, will convince you that everything is right.

"Very truly, yours,
(signed) "*Scott Jervis.*"

"20 April 1866."

The day after receiving that note I wrote a short memorandum for future guidance, in which I said that Lady Mansfield had consented to examine the books, and to the best of my recollection laid down some rules about rendering the accounts to ensure greater regularity in future. The original of this memorandum was sent to the prisoner immediately after it was written. This is a true copy bearing my initials.

Before this is read, the prisoner is asked if he will produce the original, and states he has no objection to the copy being read.

The copy is read and entered:—

"Lady Mansfield will examine the books at her leisure. I do not know why the old custom has been allowed to drop through of a monthly abstract of expenditure for my information. I think it had better be renewed, commencing with the current month; I think, further, it will be advisable that the actual expenditure under the following heads should be included in the monthly draft of cash—

"Butler's and kitchen bazaar bills; wages; stables. All accounts kept by bills with tradesmen should be settled monthly by cheque from me, the bills being presented to me for settlement with the monthly abstract in which they can be entered as paid. The object of this is to ensure, if possible, what I have always asked for, but have never quite been able to accomplish, viz., that I may have no bills running on with which I am unacquainted, *e.g.* the bill of 640 *l.* to the Colabawallah, about which I learnt only some months after leaving Bombay.

"I have already mentioned that Major Flood will be so good as to arrange for a clerk as soon as his people shall have arrived. Captain Jervis can communicate with him about this.

(signed) "*W. R. M.*"

"21 April 1866."

"A building account must, of course be kept separately, and discharged monthly. So long as it is going on, the account must be added to the three items above mentioned.

(signed) "*W. R. M.*"

"21 April."

A couple of days after that memorandum had been acknowledged by the prisoner, a request was made to him to produce the books alluded to. He then wrote a note to Lady Mansfield, which I produce. It will be observed that the purport of it is entirely different to that of the note he wrote to me.

It is read, and entered:—

"My dear Lady Mansfield,

"I will complete a statement such as you would like to see, when the boxes, with the accounts, bills, &c., arrive, and let you see it.

"Sir William has not yet spoken to me about the guard-room site.

"Very truly, yours,
(signed) "*Scott Jervis.*"

"24 April."

The discrepancy between these two notes escaped observation at the time, owing to their having been addressed to two different persons. The excuse offered by the prisoner was a very reasonable one for not producing the books, and was at once accepted by her Ladyship as a matter of course. I may now say that from that time to this I have never been able to obtain my books, accounts, or vouchers from the prisoner, notwithstanding frequent requests and orders to that purpose. When the notes to which I have referred were written and received, there was not the slightest suspicion of the prisoner's honour or integrity; but subsequently, after I had occasion to dispense with his service on my personal staff, he was begged in the ordinary course of business to render his accounts and books to my military secretary, Major Flood, and my Persian interpreter, Major Gordon. As I have before said, I had no suspicion at that time; but two officers were named, so that the time of the military secretary might not be unduly taken up with my private affairs, when he might not have leisure for the purpose. In short, it was a

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matter of the most ordinary business. It then appeared that there was a certain unwillingness on the part of the prisoner to give up his accounts. There was no reason, apparently, why they should not have been balanced in a few hours; supposing my previous impression to have been correct, that he was a man with a special aptitude for business, and that my accounts were kept up by him to date according to my wishes. I can only use the word impression there, because I have so neglected the duty of supervision that I could never be able to state that accounts were kept up to date; but I think I had a right to believe it from the manner in which the prisoner would at times talk to me of the conduct of the household business, sometimes at my own instance, and sometimes at his.

Have you ever authorised Captain Jervis to mingle his accounts with yours?—No.

Has it been the custom of the officer in charge of the household to keep your Excellency's accounts and his own absolutely separate, as shown in the household books?—Yes.

Did you conceive it possible that any other course could be followed?—No.

Would you state the system, so far as your Excellency is acquainted with it, of the manner in which your accounts are kept by the officer in charge, unless the memorandum you have already produced embraces the whole system?—So far as it can be called a system, it was one of entire confidence in the officer in charge. He engaged servants and contracted bills on my account without further check than he might consider himself expedient to free himself from too considerable responsibility. A certain sum of money, as dictated by experience, was given by me monthly for the ordinary current household expenditure, including petty bills. On account of large bills, the officer in charge used to come to me for cheques for the purpose of discharging them. To the best of my knowledge and belief there never has been a debit and credit account between the officer in charge and myself. The ledger accounts, as I have lately ascertained by reference to the books of the prisoner's predecessors in household charge were kept in this form, namely, a credit on account of the advances made to the officer in charge, and any sums paid to him on my account, and a debit with regard to the expenditure. This very simple account which it is impossible to misunderstand, was balanced every month, and until the proper custom fell through, through my own neglect, a monthly abstract was shown to me.

Did your Excellency ever authorise Captain Jervis to make use of your wines, stores, and of the services of your khansaman at Muhasoo or elsewhere, or to keep a table at your Excellency's expense, when not in actual attendance?—No.

If any such use was made, was it without your knowledge?—Entirely so.

Would your Excellency state the custom of your household with regard to your personal staff, more particularly as relates to the entertainment at table of the aides-de-camp?—In my own house my aides-de-camp are treated precisely as my relations would be when living with me. It has been, as I have always understood, a rule that nothing should be taken away from the house. I say understood, because to have put such a rule in writing would have been almost an insult in my opinion to the officers of my household, but I recollect some years ago, shortly after the prisoner had joined me on my staff at Bombay, mentioning this obligation, not to him, but to Major Flood, on the occasion of two young aides-de-camp, of whom the prisoner was one, living in a detached house, when my head-quarters were at Mahableshwar. It is, of course, preposterous to suppose that any expenditure could be permitted from my property when my household officers are away from me.

Then when not in immediate attendance on your Excellency; that is, when your aides-de-camp may be absent from the station at which your Excellency may be, they are not authorised under any circumstances to live at your expense?—No.

Does your Excellency remember any exception to the rule, or have any of your aides-de-camp so lived at your expense and with your knowledge?—Not that I am aware of. I have reason to know that they never do anything of the sort.

On exceptional occasions may friendly assistance have been given in the way of lending stores or wines to your intimate friends?—I think it very possible that this may have occurred sometimes in very small quantities, as an officer in charge would know that such small assistance, as a mere matter of courtesy, would be gladly acceded to by me. An old book was discovered two days ago, I think for the year 1861, I dare say Captain Elles has got it, in which, I believe, one or two entries of this sort appear, it thereby being displayed that such a very exceptional act, as a mere one of courtesy, was of the rarest occurrence. I should never have known anything about it, as I never saw these books.

Did Captain Jervis ever mention to you that he had any intention of re-crediting to your accounts the value of any wines and stores he might have used, either in money or kind, or the amount of any expenses he might have incurred on his own account when away from your Excellency, and which he might have charged to your accounts?—No.

Does your Excellency remember on what date the general entertainments at your residence ceased last year?—I rather think I gave it out in my house that I considered a ball which I gave in the middle of September was to be the end of such entertainments, but I imagine that I had, according to my custom, a few friends to dine with me once or twice a week, which does not come under the head of the question put by the prosecutor.

Is this one of your household books?—Yes.

(*Note.*—A cellar or daily wine expenditure book.)

Was it one of the books taken over by Captain Jervis on the 1st September?—Yes.

Does it show a daily expenditure for April 1866?—Yes.

The prisoner stated in his note of 20th April, that the household books were up to date. Is this one of them?—I have already stated it is one of the household books.

Please turn to the October daily consumption. Do you observe any unusual expenditure on the 2nd October, also on the 4th?—Yes. On 2nd October 25 quarts sherry, 1 bottle brandy, 24 bottles champagne, 12 bottles Sauterne, 26 quarts beer, 63 bottles soda water, 6 bottles lemonade, 25 bottles claret, 2 bottles port, 1 bottle Maraschino, 1 bottle Curaçoa. On the 4th October, 1 bottle

1 bottle sherry, 12 bottles champagne, 2 bottles claret, 12 pints of claret.

Is it possible that such an expenditure could have taken place at your table on those dates?—No.

Is this one of your Excellency's house books, and taken over by Captain Jervis on the 1st September?—Yes. (It is marked "stores" and shows daily consumption.)

Turning to the October expenditure, do you perceive any unusual expenditure which could not have taken place at your table on the date recorded?—Yes, apparently on the 2nd October, as follows: 1 mushroom bottle, 1 bottle Worcestershire sauce, 1 bottle apricots, 1 bottle mustard, 1 lb. tea, 1 loaf sugar, 2 lbs. coffee, 1 plum jam, 1 tin assorted biscuits, 1 tin ham, 1 tin tongue, 1 tin salmon, 1 tin oysters, 1 bottle salad oil, 2 tins truffles, 1 tin bacon, 1 tin sardines, 2 tins asparagus, 1 bottle Harvey's sauce, 1 bottle olives, 1 bottle mixed pickle, 1 bottle vinegar, 3 bottles tart fruits.

Will you examine the abstract of receipts and expenditure in other parts of the cellar and store books, and say if any refund appears on account of any wines and stores, between the 1st of September and the time the household accounts ceased to be under the prisoner's charge?—I have never done anything in the way of auditing these books, and should prefer it be done by the court.

The books being examined, the following recredits only appear:

On 21st September, Captain Jervis, nine bottles beer.

On 26th September, the thief (Jeet Sing), one bottle of sherry.

On 16th October returned from Solon, one quart sherry, one quart beer, two bottles soda water, two quarts claret, Cutler's.

The court observe that these books purport to be made up to the latter date mentioned in the last question.

Does your Excellency remember what your orders were about sending wines and stores to Solon, or other places, and could the entries of 2nd and 4th October represent wines and stores thus sent out of the house on your Excellency's account?—When I went to Solon it was the commencement of my tour; I did not give any orders about wine; but as usual, when I move, the thing was done for me, and I presume by the prisoner. Whatever was sent must have been a very small parcel, such as might suffice for the consumption of two men for a few days, and if entered in the books at all, it should appear, I suppose, on the 14th or 15th October, it being on one of those days last year that I left Simla; I left on Sunday.

Remark by prisoner.—Only a very few bottles of wine were sent to Solon.

Your Excellency has mentioned a cash-book, which was produced to the Court of Inquiry; do you recognise this book as the one you mentioned?—Yes; from the way it is kept, it is really a ledger, and not a cash-book; it is kept precisely in the manner I described in an answer to a former question.

Does it purport to be a complete account, and for what months; is it closed for the last month?—It purports to be a complete account up to the end of November last; the balance in hand on the 30th November being stated.

Do any refunds appear in it on account of any wines or stores, or any other property of your Excellency's which may have been used or appropriated, on any other account than your own; do refunds appear on other accounts?—Apparently not; there is one recovery stated on the 15th November of 60 rupees on account of an advance to a servant.

Note.—Remark by prisoner.—To save the time of the court, no refund has been made.

Which of your Excellency's aides-de-camp had charge of the stables between the 16th of December and the 25th April last?—At the prisoner's personal request, it was transferred to him in September, and held to some time in April.

Between the dates mentioned in my last question how many horses had your Excellency at Calcutta, or elsewhere?—Six.

Had the officer, who was in charge of the stable as well as of the house, any authority to purchase on your Excellency's account anything he required for the stable, and had he authority to include in the orders on your account any articles for his own or other people's use?—He had authority to purchase on my account, but not to include his own purchases on my account.

Has your Excellency since the 25th April received from any tradesman in Calcutta any bill or bills on account of stable gear, purporting to have been supplied on your Excellency's account?—A bill was received by Major Gordon for me from Mr. Monteith, a saddler, in Calcutta.

Has Captain Jervis ever mentioned to your Excellency that he had ordered any articles of stable gear from Monteith & Co. on your account, for his own use, or that he had taken any of the articles received on your account for his own use?—No.

After the 24th March 1866, was Captain Jervis in attendance on your Excellency until after your arrival at Simla; can you state the date of your arrival?—He was not in attendance on me during my journey from Calcutta to Simla, which began on the 24th March, I believe, and I arrived in Simla about the 10th April.

During Captain Jervis' journey to Simla had he authority from your Excellency either direct or implied to charge to your account his own private expenses?—No.

Did Captain Jervis ever report to your Excellency that he had charged to your account his private expenses while travelling?—No.

Will your Excellency state the primary object for which you directed the assembly of a confidential Court of Inquiry on the 10th May?—It was to enable the prisoner to clear himself of certain allegations which had been made to his disadvantage, and not being rebutted by him to my satisfaction had led to his removal from my staff; as subsequent to that removal, the prisoner had asked for what he called furlough to England. I had imagined that he was satisfied with my final decision for his removal, the more especially, as he had failed to avail himself of the offer of a confidential investigation by his two brother officers on my staff, namely, Major Flood and Major Gordon, who were directed, as he knew, to confront his accuser with him, if he chose to avail himself of the opportunity of inquiry. On my discovering that he questioned the justice of that decision, I ordered a special Court of Inquiry of selected officers, who were entirely independent of my establishment, and to the best of my

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belief previously unacquainted with the subject of the inquiry, to investigate the matter referred to. If the prisoner had proved to their satisfaction that the allegations made against him had no sufficient foundation, he would have had the advantage of it in an offer to return to my staff, and his accuser would have been discharged from my service.

What was the report of the Court of Inquiry on this matter?—The Court of Inquiry ratified the decision which I had previously arrived at.

Did your Excellency subsequently direct that any other matters should be brought before the Court of Inquiry?—Yes. When this Mahasoo business was brought to my notice, the Court of Inquiry, if I recollect rightly, had concluded its second sitting, the prisoner by the tone of his correspondence with the military secretary, and by his contumacy prior to the Court of Inquiry, had put it absolutely out of my power to ask for any explanation which should not be conducted in regularly recorded proceedings. I accordingly directed that this Mahasoo accusation, together with what had been alleged about the dishonest charge of travelling expenses, should be investigated by the Court of Inquiry, which otherwise might have been deemed to have concluded its sittings.

What was your Excellency's intention in assembling a confidential committee of audit?—The object of that was to enable the prisoner to clear his character of the imputations cast upon it by the Mahasoo affair, &c., of which he had not chosen to clear himself at the Court of Inquiry. This object was stated to the best of my recollection in the memorandum of orders conveyed by the Deputy Adjutant General when he placed the prisoner in arrest for breach of trust. It was competent for me to have ordered him to trial on a charge embodying that breach of trust, when the proceedings of the Court of Inquiry had been laid before me; but notwithstanding the contumacy he had displayed, I wished him to have the same chance that is generally afforded to officers accused of malversation, wherever that malversation may have occurred. I should mention that the object of that committee of audit was to the best of my recollection further repeated in a letter written by my direction to the learned counsel of the prisoner, who had asked for an interview for himself on Captain Jervis's behalf, with which I was unable to comply, except under very severe restrictions.

The memorandum referred to is here identified, read, marked B., and appended.

Did the prisoner after the adjournment of the committee apply for what he called an open Court of Inquiry?—Yes. After he had been warned for court martial on ceasing to attend the committee of audit. I cannot speak accurately as to dates, but this is about what happened.

Did you comply with the request?—No; there were very serious reasons for not complying.

Has your Excellency any objection to state those reasons?—The reasons may be stated as follows. In the first place he impugned the honour of the Court of Inquiry and declared it to have been biassed, thereby insulting myself, as the Commander in Chief of the army, and three officers of high rank on the head quarters staff, of unimpeachable honour, who as he well knew had been especially selected to do justice on the difference which had arisen between him and me. Further, his conduct at the Court of Inquiry was such that it was impossible for him to be able to say that the Court was biassed, or had shown bias, even if such had been the disgraceful fact. But, further, the prisoner had displayed the most determined contempt of authority in his disobedience of the order to clear his character of the imputation of scandalous conduct, according to the provisions of the Mutiny Act and Articles of War, and the custom of Her Majesty's Service; and further still, he had twice been directed to clear his character; namely, once before the Court of Inquiry, and secondly, before the Confidential Committee of Audit. He not only failed to do this, but for purposes of his own declined to restore or to render such accounts and vouchers as he might possess; the same being to the best of my belief my property, and which might have enabled the Committee of Audit to free him from the charge laid against him, supposing his accounts and vouchers to have been decently correct. There is one more reason for which I could not grant that request. I considered that the whole application was a trap, which no officer of ordinary experience in command could fall into; it was to my apprehension an appeal to the public for the purpose of mystifying opinion, and so, if possible, to deter me from the execution of my duty. The prisoner had had ample opportunities of inquiry, and when he was first placed in arrest was, I believe, solemnly warned of the consequences of not clearing himself according to the manner which is prescribed under Her Majesty's regulations for officers and gentlemen whose character for honesty may be impugned.

The Court rises temporarily at 25 minutes before 3 o'clock and resumes its sitting at five minutes to 3.

Will your Excellency give your reasons for deciding to arraign the prisoner before this Court on the present charges?—I was advised that I might try the prisoner on a charge of criminal breach of trust; the proof which would establish the present charge would have been the same to substantiate criminal breach of trust according to the definition of the penal code. On proof of such a charge taking place the prisoner would have undergone the heavy penalty attaching to felony, in addition to that which threatens him now, namely, the punishment of a military offence. Being personally affected, I considered that my judgment in this matter should be entirely guided by that of others; I accordingly desired that the two senior officers of the Adjutant General's department and the Judge Advocate General should furnish me with an opinion as to the character of the charges on which, according to the evidence in the possession of the Judge Advocate General, the prisoner should be arraigned. Those officers recommended that military charges should be framed, firstly, for the purpose of marking the military offences of which the prisoner had been guilty, and, secondly, for a reason in which I quite agree with them, that to have pressed a charge of felony might have had a vindictive appearance on my part. Perhaps it may be well that I should advert to the law of the case now before this Court. I have already explained that it was in my power to prefer

prefer a criminal charge. It is obvious also that I might have filed a civil action to recover the cost of the stores, &c., alleged to have been misappropriated. This course, being one within my own option, I was able to throw aside, the cost of the stores being a matter of no consequence; but there is one thing which, in the exercise of my office, I cannot cast aside or condone, and that is the allegation of scandalous conduct against an officer bearing Her Majesty's commission. When such an allegation has been made it is the imperative duty of the superior officer, according to Act of Parliament, to compel the accused to clear his character, or to see justice done in the sense of the Mutiny Act and Articles of War. The superior officer, even if he would, is himself responsible in this matter, that there shall be no condonation. I would hold any officer commanding a regiment in this army responsible for such condonation, if it came to my knowledge, and I would attack his commission for it. That which I exact from others in the execution of my office, I cannot flinch from myself, however odious and disgusting the duty, as in the case of the present prosecution. It is right to say that the issue before the Court is not the act of misappropriation, but it is the crime of scandalous conduct, unworthy of an officer and a gentleman, of which the unexplained misappropriation is the expression. There is no possible recovery to be founded on these charges being proved. The simple result which can follow on conviction is that the officer concerned has proved himself unfit to be one of a body of officers in one of Her Majesty's regiments. The fact of the alleged misappropriation having taken place with respect to my property is a mere accident of the case. It has affected me most painfully, but could not alter the line of conduct I was bound to pursue.

Cross-Examination by *Prisoner*.

Your Excellency has stated that the duty of keeping the household accounts was a military duty; will your Excellency state whether, in addition to your own memorandum which you have produced, you can give any other authority to support this assertion?—Any order given by a superior military officer, in a military sense, conveys the obligation of military duty. Just as we see in the case of a department, where a military officer is bound to conform to the rules of that department, his failing so to do does not carry with it, as a general rule, the consequences of military disobedience of orders, as involving a court martial, but entails loss of appointment, or reprimand, as the case may be. The officer concerned, if he dislikes the departmental rule, has, generally speaking, the remedy in his own hands, namely, to give up his appointment. This is most undeniably the case in the matter of the personal staff.

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26 June 1866.

I asked your Excellency whether your Excellency would give any other authority besides your Excellency's own exposition on the point. May I beg your Excellency to answer this?—I think my own quite sufficient.

Does your Excellency recognise any distinction between the military and social or private duties of an aide-de-camp attached to your household?—For that answer I would refer to the memorandum which has already been handed in. It is obvious that one who is not prepared to admit the social and domestic obligations of family into which he is admitted as a great privilege, must be removed from that family.

Your Excellency's memorandum itself states that the duties of an aide-de-camp are extremely difficult, being for the most part "social;" will your Excellency define the difference between social and military duties here indicated?—There are certain duties essentially military which are performed on the field. The social duties are those which must occur to every gentleman who is treated in the most intimate manner as a guest and a relation.

Will your Excellency look at the memorandum your Excellency handed in, and point out which are the military and which the social duties therein detailed?—I look upon all the duties as military that had regard to myself.

On what principle does your Excellency hold that your own opinion is sufficient decision on so important a point as this, on which I rest my justification in declining to obey certain orders; points on which charges have been preferred against me?—The points concerned have nothing to do with the charges. The prisoner is not charged for disobedience with regard to my household affairs, but for disobedience in the matter of clearing his character, with regard to embezzlement, when required to do so according to the Mutiny Act and Articles of War. The question put by the prisoner is one on which it would be difficult to quote any authority; but it is exactly one of that character which would be referred to me for decision by Government, in the case of differences arising in a department in which a military subordinate might be concerned. I am convinced that Government would accept such a decision from me as Commander in Chief, without calling it in question or asking for an authority.

The Court rises at 4 o'clock p.m., and adjourns till 11 o'clock on Thursday forenoon.

Third Day.—Thursday, 28th June 1866.

The Court re-assembles at the same place, at 11 o'clock in the forenoon.

President, Members, Judge Advocate, and interpreter are all present.

The prisoner and prosecutor appear in Court.

The first Witness, General Sir W. Mansfield, K.C.B., Commander in Chief, is called; and his cross-examination continued on his former Oath.

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28 June 1866.

Your Excellency has stated that the reason given by me to Lady Mansfield for not at once preparing the accounts was accepted, as a matter of course, and no suspicion then existed; will your Excellency then state what first excited suspicion in your mind against me?—I thought it extremely odd, considering I had been told, some days before, that the household books were complete up to date; that when the prisoner was requested to render his accounts he at first asked for time, after his removal from my staff. I was aware that if the house books were kept up to date, a man with a great aptitude for business, like the prisoner, could have balanced the books in half-an-hour. When he declared the books were not ready, by asking for time, it became apparent to my apprehension that he had written to me a positive untruth. I made no remark on this, but allowed the military secretary to repeat his requests for the accounts, which were demanded for the purpose of ascertaining whether the prisoner was in my debt, and more especially had satisfied certain demands in Calcutta, for which he received an especial draft on my leaving that city, or whether, on the other hand, there might be a balance against me, to discharge which would be naturally an object of anxiety, as the prisoner was about to quit my service for ever. Notwithstanding the adverse appearance, I steadfastly declined to doubt the prisoner's integrity. Nevertheless, there was an unsatisfactory private correspondence going on for many days, so well as I can recollect; that is to say, from about the beginning of May till the assembly of the court of inquiry, which I think was about the 10th May. In one of his notes the prisoner permitted himself to be impertinent to me, in his answer to the military secretary, about the demand for a statement of accounts. This impertinence I did not allow the military secretary to reply to, to the best of my recollection. Thus it was impossible not to have suspicion that something was wrong; but I did not dare to allow myself to form a notion of what that something might be; and I certainly gave expression in my household to the opinion that, whatever other faults the prisoner might have, his exact method of business would save him from anything that was positively wrong.

Will your Excellency state precisely what are the exact expressions in the two notes which constituted the discrepancy which excited this suspicion, and convinced your Excellency that I had written a positive untruth?—The first sentence in each note displays the absolute discrepancy. I think I should add that I did not accuse the prisoner of an absolute untruth, from those notes, but that the untruth became apparent to my mind many days after, under peculiar circumstances, when the prisoner, having been removed from my staff, showed that he was not able to produce completed books, which he had previously declared to be complete. I could then only suppose that, trusting to my indolence with regard to my accounts, of which he had had such experience, he hazarded the statement, the untruth of which he thus came to expose himself.

May I ask your Excellency, once more, to point out precisely whether there is any discrepancy, and what it is; this is of great importance to me, as it forms the first ground of your Excellency's suspicion against me, whom you had trusted for years?—Perhaps the two sentences had better be written in the proceedings.

> First Note. "All the house books are complete to date. At any time that you would wish to go over them I shall be happy to attend on you for the purpose. The general statement of accounts you have seen, to a recent date; the other shall be completed, and shown to you very shortly."
>
> Second Note. "I will complete a statement such as you would wish to see, when the boxes, with the accounts, bills, &c., arrive, and let you see it."

In the note to me of the 20th April, it is observed that "all the house books are complete to date. At any time that you would wish to go over them, I shall be happy to attend on you for the purpose." It is obvious that here there is no reservation whatever. The books are declared to be complete to date. In the second note, which is written on the 24th, apparently, he says, "I will complete a statement such as you would like to see, when the boxes with the accounts, bills, &c., arrive, and let you see it. It is thus apparent that, whereas I was told I could see the books at any moment on the 20th, it was said on the 24th that the boxes, with the accounts, bills, &c., had not come. The discrepancy therefore is very clear. There was no reservation in the first note; there was a large one in the second. It may be observed that the prisoner was not asked for a statement, but for the books. A statement was not at that time wanted, but a business-like examination of the books, on account of an expenditure spreading over some six months.

What are the house books?—I cannot state very accurately what the house books are; but I should say a ledger, files of receipts, a letter-book, and such other books as are kept by the supply

supply or issue servants, which would be the vouchers for the gross entries in the ledger. I would mention that I am not a good authority on these matters, as they have always been left to others; and I have learnt more about them in the last three weeks than I ever knew before. The books which I adverted to yesterday display the system of accounts which was introduced by a very excellent gallant friend of mine, who being my military secretary in 1860, as a personal favour to me took charge of my household when my aide-de-camp went to England. Nothing can exceed the clearness or the precision of the mode of accounts. The prisoner has often taken pleasure in expressing to me his admiration of the method introduced by the friend referred to, as showing a most perfect and simple system, which, if duly kept up, would absolutely guard against the possibility of mistake. I used to listen to such expressions in silence, or utter a simple sentence of gratification; but I thought I had a right to imply from them that that system was preserved in all its details by the prisoner; and therefore when the strange unwillingness to render his accounts was exhibited, and time asked for, I felt the more that suspicion would grow against him.

Does your Excellency mean that there is no difference between your looking over the house-books, and my preparing a general statement of accounts "such as Lady Mansfield would like to see"?—I don't know what this statement which Lady Mansfield would like to see means. The prisoner knows perfectly well that the only book I should ever have cared to see, so far as I was myself concerned, was a ledger account. I draw no distinction myself between house and household books; and it is, in my opinion, ridiculous to entertain such a distinction.

Does not your Excellency perceive that in my note to your Excellency I alluded to a statement up to a recent date, which you had seen, in contradistinction to the house-books which I offered to show you; are they not evidently different things; I beg the note may be read again with great attention?—I believe that I had seen no such statement, and this struck me at the time that I received that note. I cannot swear to this, but it is my conviction that I saw no statement of my accounts from the date of the prisoner taking over charge, namely, about the 1st September of last year; the matter did not, however, appear to me of any consequence, and it passed out of my mind. I recollect, however, in Calcutta that once or twice the prisoner brought an account-book to point out certain items of expenditure, the character of which I do not recollect, but about which it is probable that inquiry had been made. It is possible that he in this matter refers to a statement of accounts. I do not wish to contest his accuracy on the point, but I think it is evident that the two things are different, namely, an account or day-book, and a statement of accounts which, if it means anything, is either a copy of a ledger or an abstract from it. I do not believe that I had either the one or the other since the prisoner took over charge. It has been before shown that the practice of the monthly abstract had been allowed to fall through. I am tolerably sure that I had reminded the prisoner of this either directly or indirectly, and I recollect telling him in Calcutta, that it would save my time and trouble to him, if he would come to me at stated periods for orders pretty much as a staff officer does, as it was a nuisance to me to have to take up business at irregular intervals with which I had no exact acquaintance. The prisoner acquiesced in this, but it was not done.

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Is your Excellency sure that Lady Mansfield did not ask for a statement of accounts?—I believe I may say that I am sure, but the prisoner, in all probability, can produce her ladyship's note, if such was the case. I know it was rather a joke that when books were asked for, a statement should be offered. At the time this matter was, as I believe and have stated, not thought of, but since the late investigation began, the notion of the promised statement in the place of the books has raised a smile at the prisoner's expense.

How can your Excellency say you are sure, and if I offered statements when books were called for, why was Lady Mansfield satisfied, and why did her ladyship take my reasons as a matter of course?—Because she then believed him to be a man of honour. As I did not write the note asking for the books I cannot of course swear that a statement was not asked for, but as before said, it rests with the prisoner to produce the note written by her ladyship when it will be apparent whether such a request was made or not.

But if my answer to Lady Mansfield referred to something quite different from the purport of her ladyship's request, how is it that no notice was taken of it?—I really can't say, except that such confidence was placed in the prisoner as a gentleman and also as a man of business, that at that stage almost anything he might have chosen to write would have been accepted as satisfactory.

Your Excellency declared that I wrote a positive untruth. Are you now quite sure that the house-books alone would have enabled me to prepare the accounts which Lady Mansfield required, and that nothing else was required?—I have before said that I believe the books were required, and I consider as aforesaid that an untruth was written by the prisoner when he asserted that the house-books were complete, the same having been shown by him since to be incomplete. In the memorandum of the 21st it is distinctly said, "Lady Mansfield will examine the books at her leisure;" that was written because I was told by the prisoner that the books were complete to date, and there is not a word said there about statements such as the prisoner refers to.

I respectfully state that I do not refer to what your Excellency thinks, but to the purport and contents of my note, and the statements made therein. Your Excellency has yourself fixed a charge of untruth upon me, based on that note, and I respectfully submit your Excellency is under an obligation to show clearly how my saying the house-books were up to date is shown to be an untruth, because I asked for time to prepare a general statement of the whole accounts?—I must leave what has been stated to speak for itself. If his books were in the condition stated by him, it is in my opinion absurd to suppose that he could not have closed them in a couple of hours or less time. The production of his ledger was the real statement of accounts, if the assertion was true that the books were complete to date.

Then this is merely a matter of your Excellency's opinion, and the untruth publicly charged

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against me thus rests solely on that opinion?—I really do not know the meaning of that question. My evidence must stand on its merits. It appears to me that the prisoner wrote on one day that to be the case, which a fortnight afterwards, on his own showing, turned out not to be so. If this does not constitute untruth, I don't know what does.

Did not your Excellency state that you knew very little of your accounts; how can you then consider your opinion only so conclusive as to warrant you in charging me publicly with an untruth?—This opinion rests on the facts which have been stated with regard to certain circumstances and dates, and the interpretation of certain notes written by the prisoner. It has nothing to do with the appreciation of accounts. As the notes are before the Court, and the argument of the prisoner has apparently been exhausted, I would submit, with the greatest deference, that the entire question, which has been raised by the prisoner, namely, as to when my suspicion first arose, is irrelevant to the matter with which the prisoner stands charged.

Was there any difference or disagreement between your Excellency and myself before Lady Mansfield's arrival from England?—I have not had occasion to find severe fault with the prisoner since 1864, if I recollect rightly. On that occasion, to the best of my recollection, he was impertinent, or committed other misconduct, I don't recollect what now, towards the Quartermaster General of the Bombay army. So long a time has passed since the occurrence, that I cannot tax my memory too closely; but I believe he was then told that if he ever offended again in like manner, it would be impossible for me to retain him in my service. I would also say that when I framed a draft of rules for the guidance of aides-de-camp in my household with respect to politeness to my guests, and the necessity of not showing pique on the part of a personal staff officer when he might have difference with one of my friends, I had the prisoner's conduct more especially in my eye, because I had been told that he did permit himself the discourtesy of doing what is called cutting ladies and gentlemen when he had had a difference with the latter. I cannot say for certain that this is the fact, and the report was so disagreeable to me that I did not act upon it in any way; but it was the real cause of my framing the rules when I reorganised my staff on this side of India. It was always known that the prisoner was a man of most difficult temper, and I consider that I have myself held out my hand three or four times to save him from the results of his bad temper, when he might have been removed. It is, therefore, absurd to insinuate that the prisoner had not often given reason for dissatisfaction before her Ladyship's return to India.

Had this difference in any degree lowered your Excellency's confidence in my integrity or honour, and up to the time of her ladyship's recent arrival, did you not fully trust me?—I have already stated, as closely as I can, the manner in which suspicion of the prisoner's integrity first arose. I have also stated that till the occurrence of recent events my confidence in the prisoner was unabated, consequently no faults, such as those alluded to in the previous answer, could have had any effect on my opinion of him. The matter on which he is tried, and the suspicion which grew out of his own conduct, rest entirely on their own merits, and have nothing to do with the influence of Lady Mansfield, or any one else.

In what does the criminality consist with which you now charge me; the act of taking and eating the stores, or the failure to recover them, or their value?—If the prisoner can clear himself of dishonest intention with regard to the abstraction of the stores, and the other matters of dishonesty charged against him, I suppose he will be absolved of criminality under that charge; but that will not absolve him from the failure to clear his character as an officer and a gentleman, which has compelled me to entertain the notion of criminality with regard to the abstraction of the stores, and to the other matters of dishonest intention charged against him.

I referred in my question only to the stores; your Excellency refers to my "intention" regarding the stores; I again take the liberty of asking whether guilty intention is shown by the taking and eating, or by the delay in recoveries?—I consider that the guilty intention is shown by the transgression of the rules of the establishment, by which the prisoner permitted himself to take the wines and stores away from the house to another house, rented by himself, where he lived and exercised hospitality for about two months, his living and hospitality having been, as it appears, carried on at my expense. If the prisoner before proceeding to do this had said, there is a great difficulty in getting wines and stores such as I want, and do you object to my taking yours, making a refund either in money or in kind, the whole thing would have been quite simple, and I should have answered in a manner dictated by the state of the stores, and as to what was wanted for the establishment. But the prisoner did nothing of the sort. He violated the acknowledged rules of the establishment, by taking these stores for his own use; he never hinted to me that he had done so. In the accounts of October and November, there is no entry to show that he had made the slighest memorandum to mark that the said wines and stores had been consumed by him; and in like manner in the money account, which is closed up to the end of November, there is no statement of refund for value, as in the other books there is no note of the abstraction, which might have guarded the prisoner from misconstruction. I do not believe that any recovery was contemplated by the prisoner after the facts that I have stated. It is, I think, impossible to believe so. I recollect that the prisoner, in Calcutta, about the month of February, told me, of his own accord, without any prompting or inquiry, that I must expect the consumption of wine to be larger, because our party was larger. I was rather surprised at the remark, but said that this appeared to be quite reasonable. It has only occurred to me lately to remember this conversation, and on putting two and two together, to come to the conclusion that the party, meaning the gentlemen, living with me, was, at the time referred to, not larger, but perhaps even smaller than on previous dates. I do not attach any importance to this, except that supposing the prisoner's abstraction to have been made with honest intention, it would have been a very convenient opportunity for him to have mentioned a cause why the apparent consumption had been in certain months larger than it ought to have been, but that he was the person responsible for it.

I would again, with the permission of the Court,

Court, respectfully repeat my question, and beg for a precise answer. Being on your oath, does your Excellency charge me with the offence of stealing your Excellency's stores in the first instance, or the offence of failing to recover their value?—I must refer to my former answer.

Your Excellency has mentioned the admirable system of accounts introduced by a former military secretary. Does your Excellency know whether under the system to which your Excellency refers, it has been the custom to allow individuals to receive supplies from your establishment for payment?—I believe not. With one or two exceptions, which, as stated in my evidence given the day before yesterday, appear in the books kept by Colonel Kirby and Major Flood, the practice seems to have been absolutely forbidden by these officers. It appears that on one or two occasions, when I was marching, and my head quarters staff wanted some very trifling assistance, it was afforded them in the most petty manner. The name of the officer he assisted, who it is believed had charge of the head quarters mess, appearing in the consumption book. The same officer, who was a very intimate friend of my family, and of Colonel Kirby, who managed for me, seems also to have been assisted in the matter of grain-fed mutton, as a payment on that account appears in the book referred to; but the account is very small, namely, I think, about 60 rupees for a year. I looked through the book myself two or three days ago, the same being the ledger during Colonel Kirby's time, Major Flood's time, and the commencement of Captain Jervis' time, and I could find no other instances of the alienation of stores, or of recovery on account of them. I do not think I ever saw these books till I examined them the other day, but it is absolutely clear to me that the instances of neighbourly assistance just quoted were of the most exceptional kind during the time that I was at Bombay, and that any such system as that suggested by the prisoner to have existed was unknown, and always has been unknown in my establishment, unless he has inaugurated changes himself during his term of office, with which he has left me unacquainted.

The Court rises temporarily for 20 minutes, after which proceedings are resumed.

Has your Excellency ever taken the pains to ascertain this fact, beyond the trifling instances referred to?—I have made inquiries since the commencement of the recent investigation, and I am informed that the impressions just stated are correct.

If I can show that such has been the case for years, and to several individuals, would it tend to alter your Excellency's opinion, and throw some doubts upon the accuracy of your suspicions?—No.

Will your Excellency state why this fact will not affect your opinion, which your Excellency states is based on the fact that no such system has existed?—Because an honest man seeks inquiry when the honour or honesty of his character is impugned. He may be indignant, but he reserves the expression of his indignation till his character has been cleared. He courts inquiry; he searches for evidence to save himself; he brings every possible document and book without delay to stamp the injustice of the accusation. I deeply regret to say that the prisoner's conduct in the matter concerned has been the exact opposite. He has withheld evidence; he has evaded inquiry; he has shown a determination, rising almost to mutiny, for the purpose of carrying out that evasion; and this has been done after being most solemnly told that an inquiry was held to enable him to clear his character; that inquiry being carried on in such a form that if the prisoner had established his character before it, or had shown that he had erred only through laxity, he would have stood forth before the world not only without a shadow on his character, but without its being known that that character had ever been impugned.

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I respectfully submit to the Court that the last answer is no answer to my question, which is a most important one. I beg to repeat it?—I have already given a very sufficient reason as respects the point put by the prisoner; I have spoken to facts so far as they are within my knowledge; any further opinion from me is of no consequence. If the prisoner has other facts in his possession of which I am ignorant, and can adduce them in his defence as invalidating any opinion I may have formed, this, I submit, is simply a question for the Court, and not one on which I can give any satisfactory answer.

Will your Excellency look at this book, and say whether you recognise it?—I am not aware that I have ever seen this book before, but it appears to be a ledger kept on my account.

The Witness here states:—I now request, not as a witness, but as a person who has a property in that book, that it may be impounded by the Court. I beg to add that it is one of those books which have been detained by the prisoner, in disobedience of military orders and of the legal request of the owner.

The Prisoner replies:—Books kept by any one acting as agent for another, and necessary to the establishment of the trustee's or agent's claims against the proprietor, are subject to a lien on his part until the question of his claim is adjudicated; and the proprietor cannot possess himself of them till he brings his action and establishes his claim to them. They are, in fact, the vouchers on which the agent bases his claim, and cannot, without the greatest injustice, be taken from him.

The court is closed.

The Court decide that they cannot impound the book with a view to its transfer to the possession of the Commander in Chief, but that it shall be retained in possession of the Court, available for reference on the part of either prosecutor or prisoner, so far as any entries in it may be required for evidence before this Court, and subject to its further orders.

The court is opened, and both parties informed as above.

The Court adjourns at 5 minutes before 4 o'clock, p.m., until 11 o'clock, a.m., tomorrow.

Fourth Day.—Friday, 29th June 1866.

The Court re-assembles at the same place, at 11 o'clock in the forenoon.

The President, Members, Judge Advocate, and Interpreter are present.

The Prisoner and Prosecutor appear in Court.

The Cross examination of the first Witness is resumed on his former Oath.

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His Excellency requests to see the book referred to, for the sake of adding to his late answer.

Answer continued.—This book purports to be a ledger commencing with September 1863. The final closing of the accounts in this book appears to be on the 24th April 1865. I have reason to believe, that during the time covered by these accounts the prisoner had charge of my household affairs in the Bombay Presidency; consequently, if there has been any improper selling or buying in my establishment during that time, or if there has been any alienation of wines, stores, &c. for the use of private parties, and in transgression of the previous usage of the house, it must be held that the responsibility rests with the prisoner, and not with any system which may have existed in the time of his predecessors; for, as I have already shown by answers to previous questions, no such system did exist in their time. I do not, as a witness, wish to continue a discussion on the point which was raised with regard to the Court impounding this book, because of its being my property, and dishonestly and illegally detained by the prisoner. I would, however, call the attention of the Court to the fact that the account is actually closed to the 24th April 1865, and is actually a thing of the past. It is entirely distinct from the accounts with regard to which the prisoner is incriminated, and with respect to which he has been pleased to make claims on me in other places; consequently the plea which he advanced in court, that this book was necessary to him, as an agent, with regard to pecuniary claims, is invalid. His detention of this book is founded on a sinister motive towards me, as shown by the dates of the closed account, and his admission that it was required for use in a civil court. This may be, perhaps, a reason satisfactory to himself for detaining my property, but it can hardly be an excuse for the disobedience of orders.

Will your Excellency look at the items marked with a cross, and say what they are?—The entries adduced by the prisoner in November 1863 have no reference to the charges. These entries relate apparently to refunds made by the officers, who lived almost next door to me at Poonah, and as a great favour, and exceptionally, were permitted to have what was spare in the way of mutton on the establishment; waste being thus avoided, and a kindness done to the officers concerned. It is observed that this has nothing to do with stores or wines. The third entry, so far as I can understand it, is the recovery from an aide-de-camp for the expense of shoeing his horses for some months. I have inquired to know what was the meaning of such a charge appearing in this book; it appears to be as follows: That it was my custom to have a blacksmith both on the march and in quarters. This servant was represented to have been an expensive one. The staff officers represented that they could not make use of this shoeing smith unless they paid rateably according to the number of horses shod by him. Accordingly he came to be the servant of all the gentlemen who employed him, although nominally he appeared in the books as mine. This consequently accounts for a refund appearing in this ledger for such a matter. It seems to be a very ordinary matter of business for the accommodation of a number of men living in the same house, and is but a proof of the exactness with which I was served in those days, and of the scrupulous honour which governed the proceedings of the officers concerned. With the permission of the Court I will turn over the leaves of this book, and take the several charges as they come. On the 17th November 1863, there is a recovery for a shoeing account for the Adjutant General of the Bombay Army. I presume this was accounted for by the fact of my being on the march at that date, and the servant whose functions have been described was the only one available for the use of the Adjutant General on that date. I can only presume this because it was my habit in that Presidency to march at that season, but at this distance of time, without reference to documents, I could not certify to the fact. I find here in December 1863, something about eight dozen of sherry. No name is mentioned opposite the entry. Eight dozen of sherry at 25 rupees=200 rupees. If the prisoner abstracted eight dozen of sherry on that occasion, and afterwards made a refund, he distinctly transgressed the rules of my house. I find in July 1864, four little accounts, amounting to *Rs.* 6. 8., for shoeing when my head quarters were at Mahableshwur. The gentlemen concerned did not belong to my establishment, but it must have been a proper accommodation afforded by the prisoner to them in the absence of a nalbund. In August 1864, I find that Major Flood, the Military Secretary, supplied himself with mutton to the amount of *Rs.* 7. 7. during the months of June and August; that must have been done of course with the consent, and the proper consent of the prisoner. I find here an entry in November 1864, for Colonel Phayre, the Quartermaster General, whose name has been mentioned before in my examination in chief on the same account. I find here, on 18th January 1865, credits from the prisoner on account of shoeing, stretching from May 1863 to November 1864. If I had ever examined this book before, I should certainly have called his attention to the misconstruction to which he exposed himself by allowing a bill on such account to run in his own favour, namely, May 1863 to November 1864. Here are shoeing bills in February 1865 for Major Flood and Captain Christie, both on my staff. I have now gone through the whole

whole book; if I have omitted any item of the nature referred to by the prisoner, he will doubtless point it out, but I submit that the so-called facts, to which he alluded in his previous question, and which he taxed me with as such as ought to shake my opinion with regard to the system pursued in the house, whether in the time of his predecessors or his own, do nowhere appear in the book which has been brought forward by him to substantiate them. I still hold resolutely to the belief that no officer who has been in charge of my household, including the prisoner himself, has ever allowed, till the Mahasoo business took place, that the wines and stores should be appropriated, except to the obvious purposes for which they were provided under my orders.

May I request that your Excellency will read the particular items, in regard to which I asked my question, exactly as they are written, viz., the items in one page which I have marked with a cross?—These are read out:

	Rs.	*a.*	*p.*
16th November 1863. Amount received from Colonel Phayre on account of mutton supplied in 1862 - - - -	9	8	–
16th November 1863. Amount received from Colonel Phayre on account of mutton supplied from April to 12th October 1863 - - - - -	86	–	–
Amount received from Colonel Stock on account mutton supplied from May to 12 October 1863 - - - - -	65	–	–
Amount received from Captain Crealock on account of horses shod from May to October 1863 - - - - -	20	4	–

Does not this book show that for the years covered by it at least there was a system of supply and expenditure first charged to your Excellency, and afterwards recovered from the parties availing themselves of it?—To the extent to which I have deposed in my previous evidence; but the character of it is such that it was evidently of the most exceptional kind, and of the pettiest description for the accommodation of intimate friends living next door, and the one item of shoeing horses, which has been fully explained. I consider this book the most absolute proof of the exactness of the information under which this evidence is given, and showing that the alienation of wines, stores, &c., as effected by the prisoner for his own use without my knowledge, was an absolute innovation.

Does not this book also show that intervals of many months (varying from 6 to 15) elapsed between the sale of the mutton and the payment for the same, as also in regard to the shoeing?—It appears so.

If I conducted these matters, and kept these accounts with "scrupulous honesty" at that time, as your Excellency has just stated, why does your Excellency assume that, because stores instead of mutton and shoeing are concerned, I have suddenly become a thief?—I must leave that question to be determined by the Court.

How did your Excellency know that the charge of shoeing horses was entered in that book before your Excellency saw it just now?—I saw it yesterday in court.

Do you consider that the officers who enjoyed the mutton supplied to them are open to the charge of misappropriation because they did not pay for it till so long after they had eaten it?—Certainly not.

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Was the mutton sold with your Excellency's approval?—Certainly, on such grounds as have been already stated, neighbourly assistance. I do not know anything of these affairs of my own knowledge, but I am credibly informed that this supply of mutton, about which so much has been said, simply related to what would otherwise have been wasted in a hot climate; that it was procured at the express wish of the parties concerned, who, it appears from that book, were three in number, and that it did not happen that animals were killed for such supply. However, I again guard myself by saying, that about such details I had no knowledge.

Did not your Excellency charge me in the severest terms of grave criminality in allowing mutton to be sold to two officers at Simla this year?—I do not know what that has to do with this charge, and I submit that this trial will last for ever if this very irrelevant cross-examination is allowed.

The President states he has ascertained that it is the desire of the Court that fullest license, compatible with respect to your Excellency, should be allowed to the prosecutor and prisoner. No interference has been made with the prosecution, and he believes it would be unjust not to allow this cross-examination.

The Prosecutor here remarks:—I would respectfully submit that the prosecution has been precluded from entering upon these matters. I do so, not in opposition to the ruling of the Court, but to account for this matter not having been entered upon in the examination in chief.

The witness begs it may be understood that he does not object to answering the question for any reason of his own, but to save protracted and irrelevant inquiry.

The Prisoner explains:—I submit his Excellency has pointedly referred to my dismissal from the staff, with which this question is closely connected. It is of actual importance to me, as showing the groundless character of the first action taken against me.

The court is closed.

The court is opened, and the parties are informed that the question is allowed.

Witness.] I removed the prisoner from my staff for setting up a retail shop on my premises, on his own account. I myself being constituted one of his retail customers, sufficient evidence was shown to me to establish the *primâ facie* case against the prisoner, as just stated. It was not, therefore, on account of the mere sale, but because he was become a retail vender, using my premises for the purpose, and the shadow of my name, I solemnly believe, for the purpose of increasing the number of his customers. These retail operations extended over various articles, some of which were actually purchased in the bazaar, according to the evidence before me, to be retailed again by the prisoner. As the Court has chosen to enter into this matter, which I am afraid will much prolong its labours, I would mention that I am acquainted with what has been stated from evidence laid before me, but

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but that it is not matter to which I can speak directly.

The court is closed.

The Court decide that the above answer does not convey a direct answer to the question, and inquire, independently of what may have led to the prisoner's removal from the staff, whether the prisoner was severely censured for the sale of mutton to two officers, as asked by the prisoner. This being the last question, at the present stage of the proceedings, touching upon this subject which the Court will admit, his Excellency is requested to have the goodness to reply to the question in direct terms.

Witness.] I cannot reply in more direct terms than I have already. Certain memoranda, conveying my censure to the prisoner in this matter, were written by me after taking the evidence to which I have alluded. It is probable that the prosecutor will be able to produce those memoranda if required by the Court, but I am positively unable to answer the question referred to in more precise terms than I have done.

The Prisoner states:—In deference to the wishes of the Court I will drop this subject.

Will your Excellency look at this note, and say whose signature it bears?—It bears Lady Mansfield's initials.

And this note also?—It is signed by Lady Mansfield.

With consent of both parties a portion of the first note is read and entered, addressed, "Dear Captain Jervis,—The only book I believe which I have still to see for this month is your own, which contains the summary of all the expenditure, and which you said you would let me have as soon as it was ready."

The note is not dated, and the witness observes that it was probably written after the memorandum which has been before the Court.

The second note is read and entered:

"Dear Captain Jervis,

"I am now looking over Abbey's books. Will you be so good as to let me have the one which contains the accounts of the total expenditure since you took over charge last year. Have you seen the site his Excellency fixed on for the guard room?

"Yours, sincerely,

(signed) "*Margaret Mansfield.*"

"24/4/66."

Now, will your Excellency state distinctly, after reading these notes, what it was that Lady Mansfield really required from me?—I suppose the ledger.

The Court rises temporarily for 20 minutes, after which it resumes its sitting.

What does your Excellency mean by the ledger?—I mean such a book as that which we have had before the Court to-day; and the other book, which was, I think, produced by the prosecutor at an early stage of the proceedings.

Will your Excellency state what in your Excellency's opinion is the difference between a ledger and a cash account?—It is rather difficult for me to say, as I am not in the habit of keeping books; the book produced to-day completes my notion of a ledger, and it is possible, but I may be in error, that a cash account means a diary of expenditure, kept from day to day, as money is spent or received, the same being one of the authorities on which a ledger may afterwards be made up.

May I trouble your Excellency now, after the perusal of these notes of Lady Mansfield's, to say whether, if Lady Mansfield required what her ladyship specified, viz., a summary of the whole expenditure (whether that be, in your Excellency's opinion, a ledger or not), there is any, and what, contradiction in my two notes referred to yesterday, in one of which I state that the house-books are up to date, and in the other, that I could not prepare the statement she wished till certain books, papers, &c. arrived?—I must refer to my answer of yesterday, as it appears to me that the notes in question make the point still more clear, namely, that the books having been declared to be complete to date by the prisoner, and that he was ready to present them at a moment's notice, they were not complete. There could not possibly be any misapprehension in the prisoner's mind when he wrote this note with respect to the house-books being complete to date, and the inference to be drawn from the assertion, because he concludes the note with this sentence, "The books, which you can see at a moment's notice, will convince you that everything is right." How could I be convinced that everything was right if a ledger was not complete to date; in point of fact, this last sentence is the exact complement of the first one. It is clear to me, from her ladyship's notes, that it was not a statement she required, but such a book as I have described.

Has your Excellency any idea why I felt that "unwillingness" to produce my accounts to which your Excellency has referred?—I really cannot account for the prisoner's motives, unless it was that he wished to change places with me in disputing my right to give orders in regard to my own affairs. I have before said that, up to that moment, there was no suspicion in my mind.

How has your Excellency arrived at the extent and value of the stores which you accuse me of misappropriating?—That must be shown by other evidence; I am not able to speak on that subject.

Your Excellency has publicly brought the charge against me and on oath, and cannot you yourself state on what that charge rests?—

The Judge Advocate remarks:—The witness can only be cross-examined as to what he himself has stated on oath. He has directed these charges to be preferred, but he cannot be cross-examined to ascertain by hearsay on what evidence he proceeded.

The Prisoner observes:—I submit to the Court whether a prosecution can stand when the party bringing the charges cannot satisfy the Court on what evidence he brings them.

The Court adjourns at 4 o'clock p.m., until 11 o'clock on the forenoon of Monday, 2nd July.

Fifth Day.—Monday, 2nd July 1866.

The Court re-assembles at the same place, at 11 o'clock in the forenoon.

President, Members, and Judge Advocate are all present.

Prisoner and Prosecutor appear in court.

General Sir W. Mansfield, the Commander in Chief, is recalled; and, before continuing his cross-examination, with consent of the prisoner, at desire of the Court, his examination is read over.

The court is closed to consider the propriety of putting the last question proposed before adjournment.

The court is opened, and the parties are informed that the question is disallowed.

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Your Excellency stated in your examination in chief, that I had charge of your household expenditure from the 1st of September last; does your Excellency mean that this was the only period during which I managed your household affairs?—No; I referred merely to what happened in this Presidency; as shown by the book produced by the prisoner, he had charge in Bombay for about two years.

During the whole of that period did I exert myself to the best of my abilities in the management, and was your Excellency thoroughly satisfied with my exertions?—Yes; I had reason to be satisfied; otherwise I should not have proposed to him to take charge again.

Did your Excellency keep any private clerk in your own pay to assist me in the preparation of the accounts during that period; or any and what portion of it?—No. The custom of the house, as transmitted to me from my predecessor, Sir H. Somerset, was, that a clerk in Military Secretary's office assisted the officer in charge of the household as a writer. In this matter the prisoner must have had the same assistance as his predecessors.

Has your Excellency kept any clerks since I took charge on the 1st September, and what assistance have I had?—I recollect that about that date there was some talk about the clerk who was retained for the purpose of writing for the officer in charge, being too young for his office; I am tolerably sure that I told the prisoner to provide himself with as good a writer as could be found, at my expense; I certainly did so to his predecessor in charge; if, therefore, he was in want of due assistance it was his own fault. I really do not know, but I believe this young clerk was discharged in Simla; the prisoner can answer this himself; but in point of fact, I do not know any officer of my acquaintance who is so independent of a clerk as the prisoner.

When was the management transferred to Captain Christie; what was the result of the transfer, and why was it re-transferred to me?—Captain Christie took charge of my marching establishments when I left Bombay in January or February 1865 for a march in Scinde, prior to relieving Sir H. Rose of this command. The prisoner having obtained three months' leave of absence to remain in Bombay, he was requested by me at the time to close everything for me at Bombay. Captain Christie remained in charge until the 1st September, as before related. His management having proved unsuccessful, I proposed to the prisoner that he should take it over again, to which, so far as I could see, he very gladly acceded. There is a curious feature connected with this, which illustrates a portion of my evidence at an earlier stage; the prisoner was somewhat impatient to get charge of the account books, and accused Captain Christie of great negligence in handing over his accounts, and asked me to give Captain Christie a positive order to remain at home for the purpose of making up his accounts. Accordingly, at the prisoner's instance, I did speak to, or cause Captain Christie to be spoken to, I forget which, with the view of obviating delay as much as possible. I have pleasure in referring to the exactness with which Captain Christie, when thus addressed, discharged in two days the duty which I have been in vain requiring from the prisoner for two months.

Did not very great confusion arise under Captain Christie's superintendence; and did not serious robberies take place, which I discovered; if so, be so good as to mention the particulars?—I have already said that Captain Christie did not succeed in his management; I now much doubt the great confusion which was attributed to Captain Christie by the prisoner, although he certainly represented to me in the strongest terms that such confusion existed, with the implication that it was to be attributed to Captain Christie. Captain Christie was, doubtless, fond of amusement, and was inexperienced. It is true that almost immediately after the prisoner took charge two distinct gangs of thieves were discovered in the house, and mainly, I believe, through the prisoner's energy; but that such thieves were there was an accident, and could hardly be said to be the fault of his predecessor.

The object of my question was not to throw blame on my predecessor, but to show the service I rendered to your Excellency. May I again ask your Excellency to relate the circumstances of the robberies, and of the recovery of the stolen property?—I really cannot give any details on the subject. The prisoner discovered the thieves, and took a great deal of credit to himself for that discovery. I do not at all wish to contest it.

Had I not, with the building of the new house, the management of the stables, the control of the household expenditure, and all my other duties; an unusual amount of labour to get through?—I do not think it can be called unusual to the prisoner, because he always grasped at every thing of the sort. He had a curious jealousy of anybody else in the house being employed by me; thus, he almost insisted on taking charge of the stables, which was a very petty affair, owing to my having but few horses; and as to the building, it was a

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matter in which, apparently, he took the greatest delight, and was certainly voluntary on his own part. I should add, that with regard to the extra charge thus undertaken by him, he has been eased of much attendance which otherwise would have fallen to him. Thus, when I have moved I have, on both occasions in this Presidency, left him behind me for the purpose of saving him or enabling him, with due regard to his own leisure, to give the necessary attention to the business thrown on him by having charge of the house.

Your Excellency states that I always grasped at all business from jealousy; may I ask your Excellency to state whether I never transacted any business for your Excellency at Bombay, for your Excellency's own exclusive interests, to which such an imputation cannot be affixed?—I believe not, with the exception of one occasion.

Did I ever obtain any Port Canning shares for your Excellency, and if so, on what occasion; what was then the value of those shares; and what profit did you derive, or could you have derived by the sale of them at that time?—This question explains to me certain libels which I understand to have been put about with regard to me, and I have heard those libels ascribed to the prisoner, but I cannot say whether that is just of him or not. I forget in what month, but I think it was very early in January 1865, the prisoner came to me, and said he had been commissioned by the house of Stewart, Ritchie & Co. to ask me whether I would take an allotment of the Port Canning Scheme. I believe that at that time this scheme had been mentioned in Bombay for only three or four days, but in this I may be inaccurate. I certainly did not know that the shares were at a high premium, whether they were or not; but I did know something about the Mutlah, and of the discussion which took place, if I recollect rightly, in Lord Dalhousie's time, when I was in India. Having never taken a single share in any of the undertakings got up at Bombay, because I was connected with the Bombay Government, I recollect saying to the prisoner, or to somebody else who called immediately afterwards, that I might legitimately take an allotment of the Port Canning Scheme, which was under a government with which I had no connection. I accordingly told the prisoner that he might mention to the firm, which had commissioned him to ask the question, that I would take an allotment. Accordingly, an allotment of five shares was sent to me by the firm of Ritchie, Stewart & Co., but I do not conceive that the prisoner had anything to do with the allotment being made to me, further than that he was the messenger of the acting head of the firm, with whom he happened to be residing. The object of the prisoner's question is very obvious, and if that object be not met a slur might be cast on my name. I must therefore ask the Court's permission to say that on my discovering that the Port Canning shares had gone to an extravagant premium, something like 1,000 per cent., which was absolutely a most fictitious value, I determined to adhere to my principle, which through life I have maintained, not to permit myself to gamble in the premia of a stock market. Accordingly, with respect to these very shares, although I might at once, according to the quotations of the market, after the shares were paid for, have made 2,500*l.* on an allotment which cost me but 500*l.*, I determined not to sell them, and I have them at the present day. With respect to that determination, the prisoner, although trusted in so many things, was, I am happy to say, not trusted with my banker's book.

By *Prisoner.*] I claim the protection of the Court with regard to the last expression.

Witness.] I did so trust my military secretary; and his intimate acquaintance with my affairs would enable him to show how false and treacherous is the suggestion conveyed in the prisoner's question.

The President replied as follows to the prisoner's remark:

The Court consider that the nature of the question is such as to challenge the fullest reply.

The Prisoner remarks:—I only rose to object to the personal insult conveyed in the expression of the witness.

The court closes to consider a question, after which it is their intention to rise temporarily.

The Court consider that they have already allowed a wide latitude to both questions and answers, and beg to intimate that, for the future, only such pertinent questions (and direct replies) will be allowed as appear to the Court to bear on the charges.

On the Court resuming its sitting, the above decision is read out.

By *Prisoner.*] I wish particularly to represent to the Court, that my only object in putting the series of questions I have lately put, has been to show the valuable and disinterested service I have rendered to his Excellency with reference to his disparaging statement.

Your Excellency has stated that I was positively prohibited from allowing retail sales; why then did your Excellency direct the retail sale of your Excellency's beer to private individuals, and at what profit was it sold?—I distinctly deny having ever done anything of the sort. Just when the prisoner was finally relieved from charge lately, I learned, to my extreme surprise, that he had ordered beer on wholesale on my account, and that he was retailing it to certain gentlemen in my neighbourhood, whether with hope of profit to himself or not, I cannot say. As soon as I made the discovery, I gave orders that the objectionable practice should cease immediately, and I also desired that the gentlemen who had profited by the practice should be informed that I could not possibly consent to any payment being received on account of the beer in question.

How did your Excellency first find out that I had misappropriated your Excellency's stores, and on what occasion?—I really cannot say how the thing first transpired in my establishment. Suspicion had gradually clouded over the prisoner, in spite of myself, on account of his extraordinary unwillingness to render his accounts. Suddenly the question was put, I don't know how, to the effect that the prisoner had been living at my expense at Mahasoo. The consumption books were called for, which seemed to vouch the suspicion. The servants were then examined separately and carefully. The greatest pains were taken to prevent collusion on their part. Nevertheless their statements hung together with remarkable consistency. I think that Captain Harbord was also examined as to the same point, but he could give no real testimony, with the

the exception of his having made a payment to the prisoner for his share of certain expenses at Mahasoo. What told principally against the prisoner was the fact that he had never directly or indirectly suggested to me that he had made such use of my property. This, coupled with the unwillingness to render the accounts, at last forced the conviction on me that something had taken place which would not bear the light. I accordingly directed that the matter should be inquired into by some gentlemen who would bring perfect independence to bear on the subject. That is, the Court of Inquiry, which had already been investigating certain conduct of the prisoner.

Did your Excellency ask me for any explanation, or give me any opportunity of explaining the circumstances before summoning a court of inquiry?—As I have before said, the court of inquiry was sitting. I think I have also mentioned that the prisoner's conduct had been such, in respect of contumacy, that I was precluded from holding private communication with him, that contumacy having ensued on the assembly of a court of inquiry, which was ordered, owing to a strict notion of justice towards him, when I understood that he had considered unjust a decision which had removed him from my staff; but further, the prisoner had not removed from my mind the impression that concealment or duplicity had been practised towards me in an important particular. Consequently, as a superior officer who had received allegations damaging to the character of a subordinate, any private communication from me would, under the circumstance related, have been, in my opinion, contrary to the precedents of the service, according to which the character of officers is guarded. I gave all this matter the most serious reflection, and I believe that everything which was done was exactly in accordance with what any regimental commanding officer would have ordered in the case of one of his captains being accused of improper or scandalous conduct. In the consideration of matters of this description, all private relations cease as a matter of necessity until the character of the officer concerned stands forth clear and unsullied.

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Will your Excellency explain precisely what acts of mine your Excellency refers to as being such that they prevented your Excellency asking for any explanation before your Excellency brought this grave and dishonouring charge against me?—The prisoner distinctly refused to go to the court of inquiry in the first instance, and he did not go except under a threat of being visited with the consequences of disobedience of orders. In a previous part of my evidence I have alluded to the fact of his being personally impertinent to me in his correspondence with the Military Secretary, with reference to the demand for his accounts; I should add, that he was contumacious throughout his attendance at the court of inquiry, as reported to me.

Does not your Excellency remember that I declined because my edition of Pipon's Military Manual distinctly stated that it was optional for me to go or not?—He ought to have known that the manual was wrong, and I believe he did. I looked upon the whole thing as a piece of impertinence.

Did not a correspondence ensue between your Excellency and myself on the subject, and will your Excellency produce the correspondence on this point?—Out of compassion for him I did that which most general officers would not have done, that is to say, that instead of at once placing him in arrest for his gross impertinence and affectation of legal knowledge for the purpose of disobeying my orders, I desired the Adjutant General to send him an extract of a later edition of Pipon, in which the error of which the prisoner had taken advantage was set right. If the Court wish there can be no objection to copies of the correspondence being annexed to the proceedings, but it has nothing to do with the issues contained in the charges.

The Court adjourns at five minutes before 4 p.m., until Eleven o'clock to-morrow forenoon.

Sixth Day.—Tuesday, 3rd July 1866.

The Court re-assembles at the same place, at 11 o'clock in the forenoon.

President, Members, and Judge Advocate are all present.

The Prisoner and Prosecutor appear in court.

General Sir W. Mansfield, K.C.B., Commander in Chief, is called in, and his cross-examination continued.

The following letters are read:

From Captain Scott Jervis, Aide-de-Camp, to the Adjutant General, dated 10th May 1866, marked C., and Appendix.

Reply of same date, from Adjutant General, marked D., and appended.

Has your Excellency any objection to produce, and have read, the order first directing me to attend the Court of Inquiry, with my first answer thereto?—I have no objection if the Court has none.

The court is closed.

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The Court disallow the question as contrary to the ruling they have already intimated, that this cross-examination should for the future be confined to questions pertinent to the charges, and direct replies. The prisoner is not charged with having refused to appear before the court of inquiry.

The court is opened, and the above decision read.

By *Prisoner.*] I respectfully submit to the Court, that his Excellency has given my "contumacy," in not going to the court of inquiry, as a reason why his Excellency did

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did not ask me for explanation regarding the stores. If I am not allowed to show that I committed no contumacy, I cannot shield my character. I would respectfully add, that military law allows a prisoner to cross-examine on all points stated in the examination in chief, and my contumacy has been frequently referred to by his Excellency. I only wish to show the Court, from the whole correspondence, that I did not commit contumacy as stated by his Excellency.

The Court, having re-considered the matter, adhere to their former decision.

The court is opened, and the decision read out.

Will your Excellency kindly state what servants were examined about the deficiency of stores, and what other persons; who conducted the examination; and where was it held?—To the best of my recollection the servants immediately examined were, a man who was lately an abdar in my service, some man connected with the kitchen; his name, I think, is Baboo Khan, a Chuprassie, whose name I don't know, and I think that the last evidence on that occasion was Captain Harbord. The consumption books were looked at at the same time, which really formed the important part of the evidence, as vouching the oral statements of the servants. The examination was conducted in my presence, and in my house, and taken down, I think, by the military secretary; in fact it was made as formal as it well could be. Each servant was carefully warned; and precautions were taken to prevent the possibility of collusion on their part. They did not know what they were to be examined upon when they entered the room where the examination was conducted, so far as I am aware.

Your Excellency has not stated exactly where the examination was held. May I beg your Excellency to state in what room?—The question is absurd. The prisoner knows it could only take place in my own room from his knowledge of my habits of business.

Was this examination taken prior to the first court of inquiry, or afterwards?—

Objection by *Prosecutor.*] This matter, I beg to submit, was not introduced in his Excellency's examination in chief. The several witnesses in support of the charges will be produced, and an opportunity of cross-examining each will be afforded to the prisoner.

The *Prisoner* replies.] I submit to the Court that the general statement of the witness in his examination in chief is such, that it becomes necessary to cross-examine. The witness, if I remember right, did make a statement which fully justifies this question. But even if he did not, it is absolutely necessary for the ends of justice, and I submit for the satisfaction of the Court, that the real origin and history of these proceedings, all of which were taken by his Excellency behind my back, should be developed in this cross-examination.

By *Judge Advocate.*] The Commander in Chief gave reasons for not asking for an explanation privately. This of itself was not material, as it is quite customary for a military officer to send charges in the first instance before a Court of Inquiry.

By *Prisoner.*] I submit that the opinion of the Judge Advocate has no connection with the subject.

The witness has stated generally that he inquired into the matter and discovered that I had misappropriated the stores. It is surely desirable that the Court should know how these inquiries were conducted, and what were the sources of his information.

The question is allowed.

Afterwards.

Can your Excellency mention the date?—No; I cannot, precisely; but I rather think that it was the same date that the court of inquiry assembled for the third time. If it was not the same day it was the day before; but I recollect that there was not the slightest delay in forwarding the matter for investigation to the court of inquiry, when the *primâ facie* case had been made out as described.

It is of great importance (as I shall afterwards shew) to know from your Excellvncy whether the examination was actually before or after the third sitting of the Court?—There were only three sittings of the Court as far as I know, consequently it must have been before the third, that is to say, the last sitting.

Will your Excellency produce the papers connected with the examination referred to, as well as the charges before the court of inquiry?—

By *Judge Advocate.*] The witnesses will be produced and examined on oath or solemn affirmation, and I submit evidence cannot be taken as to their former statements before such sworn evidence is heard; afterwards, previous statements can be inquired into for the object of showing variance, if such is alleged.

By *Prisoner.*] I submit that these papers are according to the witness's statement, under his own control, the examination having been conducted by his Excellency in person in my absence, it will lie at the root of my whole defence to show the character, the time, the manner, and every other detail connected with these inquiries, and I am helpless in this matter unless the Court directs the production of them now. There is no rule of law, justice, or procedure to forbid such a course, and unless the Court assist me in obtaining their production, it is impossible to say whether they will be produced.

The witness remarks, that it will clear up misapprehension if he is allowed to answer the question.

The Court is closed.

The Court decide, that when the native or other witnesses who were examined before the Commander in Chief, or before the court of inquiry have been examined before this Court, it will be open to the prisoner to have access to the documents containing their previous statements, which will be available to all parties; the papers to be placed in the custody of the Judge Advocate, it being understood that the remark of the witness meant his willingness to produce the examination taken before himself. As regards the second application, viz., for the charges before the court of inquiry, the Court consider that their investigation is limited to the charges on which the prisoner is tried. The

witness

witness to be requested to place the papers referred to in possession of the Court.

The Court is opened, and the above decision read.

The papers were sent by me to the Court of Inquiry, and are attached to the proceedings, which are in possession of the Judge Advocate.

May I ask your Excellency to refresh your memory, and endeavour to state, as precisely as you can, who first informed you of the fact of misappropriation, which led to the examination?—I really cannot say; the suspicion arose against the prisoner in my household, but by whom the charge was first affixed it is beyond my power to answer.

Your Excellency has stated, that you asked for no explanation from me before you charged me with misappropriation; if your Excellency had asked me, and I had told you that I had taken these stores, intending to pay for them and recover their value when the accounts were closed, would your Excellency have then charged me with that crime?—I should have taxed him with a falsehood, which was elicited by his own cross-examination very clearly; with regard to his books being complete, had they been complete, and he had shown a refund either in kind or in money, he would, of course, have got the advantage of it; but if he could not show refund either in kind or money, which he has himself now admitted, that circumstance, taken together with the deception passed on me with respect to the books being complete, and his inability to render accounts for 10 days which had elapsed since his removal from the staff, would have compelled me to reject his plea of honest intention, unless some extraordinary circumstances had been stated sufficient to obliterate the extraordinary grounds of suspicion to which I have adverted, and which I believe would be sufficient for the committal of any prisoner charged with misappropriation before a police court.

Did your Excellency consider that there was no possibility of doubt as to the intentions of a gentleman and officer whom you had fully trusted up to that time, and who had served you faithfully for so many years?—I did consider there was possibility of doubt; and it was on that account that I did not place the prisoner at once in arrest when I sent the original depositions to the Court of Inquiry for him to explain away. If I had not doubted, it would have been my simple duty to have ordered his trial at once. Even after his foolish and contumacious conduct at the Court of Inquiry, I still continued to doubt the possibility of one being guilty of such conduct who had been so long about my person. Yet it must be said that the prisoner's conduct from first to last, since it has been impugned, has been of that character which fixes the stain of guilt upon an accused man.

If there was a possibility even of doubt, does not your Excellency consider that as a gentleman, your aide-de-camp and a friend who had done you faithful service, I was entitled to the benefit of that doubt before I was publicly accused at a Court of Inquiry, and that your Excellency was bound to ask me for explanation, before you thus accused me?—In the first place, the prisoner was not publicly accused before a Court of Inquiry. There is a *suggestio falsi* in the question he knows well, and he has tendered his thanks in one of his letters to the Adjutant General, because the Court of Inquiry was strictly confidential. The prisoner had ceased to be my friend, and I am sorry to say that he was rapidly losing the character of a gentleman in my eyes by the circumstances which have been elucidated in the course of this cross-examination with regard to the matter concerned. I do not contest his previous devotion to my service in former days, but the recollection of that could not but be wiped out by what appeared to me to be a course of duplicity and open contempt of authority, when as an officer and a gentleman he was desired to clear a character on which a slur had been cast. I should add, also, at that time he was no longer my aide-de-camp, he having been removed for sufficient cause.

Even if this Court of Inquiry was confidential, it was still held in the presence of several officers; does your Excellency still consider it was fair or for the benefit of the service, that these public or *quasi* public proceedings should take place before you had even asked me for explanation?—I still say there is a *suggestio falsi* in the question. The prisoner knows as well as I do, that it is quite impossible that the proceedings of such a Court of Inquiry could transpire beyond myself and the department of the Judge Advocate General, who would have to report on it, the same being confidentially transmitted to that department by the Adjutant General. With respect to the proceedings being fair, or for the benefit of the service, I answer with a direct affirmative. The prisoner was treated as I should treat my nearest relation, if similar accusations were laid against him; and this, not for the purpose of persecuting the accused person, but to perform a most friendly act towards him; namely, of righting him in such a manner that it might be impossible that any aspersion could be thrown on him hereafter.

By *Prisoner.*] The Court cannot fail to have observed how frequently and pointedly the fact of my dismissal from his Excellency's staff has been referred to by the witness, and how his Excellency has pressed the point of my unwillingness to produce my accounts. Both these facts have been stated to my disparagement, and I feel that both must, before this Court, tend to my disparagement, unless I am allowed to show, from the mouth of the witness himself, the facts connected with them. I respectfully, therefore, solicit the Court's permission to cross-examine his Excellency fully on these two points. I ask permission, before I put any questions on these points, because the Court appeared at a former sitting to object to these subjects being mooted. But it is of vital importance to me, to prove from his Excellency's own mouth, what good and sufficient cause I had for the unwillingness so frequently mentioned. This is, I submit, absolutely necessary in justice to me.

The Court closes to deliberate, and with the intention afterwards to rise temporarily.

The Court decide that they will take each question on its own merits, to receive or reject.

The Court resumes its sittings, and the above decision is read.

Has your Excellency ever inquired, and does your Excellency know how I obtained actual

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possession of these stores, and what I did with them?—It appears to me that the question has been answered before. I did inquire of the servants as before related, and it is known to the Court that the prisoner has acknowledged before the Court that the stores were taken out by him without refund. It is presumed that the prosecutor will allege other evidence than mine regarding their consumption.

I mean in what way I took them; openly or privately, and how?—I don't know anything about that. The prisoner never told me that he took them, so I may say that he took them privately.

Has your Excellency never ascertained or tried to ascertain whether there was any concealment in the way I took them, or whether I had them given to me in the ordinary course?—As the prisoner had entire charge of my establishment, including the stores, he could give any orders he pleased, and no servant would have dared to disobey him. Consequently, it was in his power to alienate anything he pleased; and unless he brought it to my notice himself, no one would have reported the matter to me. The fact of concealment lay in his not reporting to me, when he permitted himself a practice which was an absolute innovation.

Your Excellency has yourself produced and read accounts in which those stores are entered; is not this the case?—Yes; but I believe the entries to be incorrect with regard to the month more especially referred to.

How does your Excellency suppose these entries came into these accounts?—Part of them appear in the prisoner's own handwriting. Some of the entries on October 2nd are undoubtedly in the prisoner's own handwriting; but further, he was responsible for the books in whatever handwriting the accounts might be made out.

Will your Excellency answer the last question more precisely?—I cannot do so. I have answered it to the best of my ability.

Your Excellency says the entries are not correct; whether correct or not, has not your Excellency yourself produced these books, and does not your Excellency rely upon them as evidence against me?—Certainly, as part of the evidence against the prisoner. I consider the October page of these books to contain false entries. Nevertheless, though the amounts as represented to me are less than the quantities alleged to have been misappropriated by the prisoner, these books are strong corroborative evidence that certain abstraction of stores had taken place, and they certify to the fact that the prisoner knew of such abstraction. A particular feature about the wine account for the month of October is, that it appears to be the solitary month treated of in the whole book, wherein consumption took place, which is not closed, and does not strike a balance of what remained in store.

When a person wishes to steal or misappropriate, does he usually do so, with the knowledge of others, and especially natives; and in such a way as to secure evidence against himself?

The Court is closed for deliberation on this question, and the Court allow it.

The Court is opened.

I should think not, but the question does not apply to the prisoner's case, as the servants in carrying out the stores in question, saw no occasion to question the motives of one whom they were desired to recognise as their legitimate master.

Has your Excellency ever inquired or ascertained whether any portion of the stores which your Excellency has charged me with misappropriating, have been sent to other parties; such for instance, as his Excellency the Viceroy?—It has never occurred to me to ask such a question, but I should think it impossible. I am tolerably certain that it would have been mentioned in my presence, if such an occurrence had taken place.

Does your Excellency know on what occasion most of these stores were issued?—I know nothing about it, beyond what was deposed before me on occasions previously referred to.

Does not your Excellency know that I gave several picnics in the early part of October last?—By hearsay I know of this; and as I understand, at my expense.

Did not your Excellency yourself occasionally honour me with your attendance at these parties?—The prisoner having taken a house at Mahasoo, asked me more than once to pay him a visit there. It is not much in my way to pay visits to any one, but I thought it would be churlish on my part not to gratify the prisoner, for once. Accordingly, I think about the beginning of October or end of September, I cannot say which, I passed to the best of my recollection three or four days as his guest. There were at the time, I believe, two other gentlemen besides, whom the prisoner had proposed to me that he should ask to meet me, they being in the habit of dining with me every week.

If your Excellency yourself honoured me with your presence, how did your Excellency say that you knew of these parties by hearsay?—Because the party was restricted, as I have described, to myself and two others, during my visit to Mahasoo; but I do recollect now that he calls it to my mind, that on, I think, the day of my arrival at Mahasoo, there was a large party assembled, not for the purpose of meeting me, because I came in the evening, so far as I can recollect; but all this appears to me to have nothing to do with the case before the Court, as no one, so far as I know has ever questioned the fact of the prisoner giving parties at Mahasoo.

Does your Excellency know, or have you reason to believe that some of these parties at Mahasoo were given by others as well as myself?—I believe that Captain Harbord did join in some of these parties, and that he paid the prisoner on account of them; on this, however, Captain Harbord will speak for himself.

The Court rises at a few minutes before 4 o'clock, p.m., and adjourns until 11 o'clock to-morrow forenoon.

Seventh Day.—Wednesday, 4 July 1866.

The Court assembles at the same place at 11 o'clock in the forenoon.
President, Members, Judge Advocate and Interpreter are all present.
The Prisoner and Prosecutor appear in Court.

General Sir W. Mansfield, K.C.B. is called into Court, and his cross-examination resumed on his former Oath.

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At the request of the prisoner the proceedings of the last day are read over.

Is your Excellency aware that Captain Christie also joined in giving the parties at Mahasoo?—No, I am not.

If Captain Harbord made a refund towards the value of the stores; does that not show that they were taken with the intention of recovering their value afterwards?—I think not; because if such an intention had existed, an entry of Captain Harbord's payment would surely have appeared in the ledger which has been before the Court, and in which the Court observed, if I recollect rightly, a small recovery which was entered on account of an advance to a servant.

Then on what ground did Captain Harbord make this payment to me?—As I have been informed to pay for his share of the entertainments.

Is your Excellency sure that the book you refer to is a ledger?—I have already in my previous evidence given my reasons for considering it a ledger, and it is exactly similar in character and form to the ledger kept by the prisoner in Bombay, which he laid before the Court.

Will your Excellency look at this book, and say what it is?—This seems to be an account book with various tradesmen, showing the nature of my accounts with them; that is to say, apparently copies of the bills with the tradesmen.

I should like the same conditions to be observed regarding this book as regarding a former.

By *Court.*—The book has been made over by the prisoner to the Judge Advocate.

Is not this the book which is called the "ledger" by all accountants and commercial men?—I should say not; but the Court is as competent to judge of that question as I am. As I understand, this book which I see for the first time, does not treat of moneys paid over to the officer in charge, but contains exact copies of very considerable transactions with tradesmen in England and in India, the payments to whom were made by orders from myself, irrespectively of the expenditure controlled by the officer in charge; even if it is a ledger, which I do not think, it is clearly not the ledger which treats of the business with regard to the actual payment of money for which the officer in charge was responsible. I am a very fallible authority on such matters, and I would leave it to the Court to determine the character of the book.

Did your Excellency ever see a letter written by me to your Military Secretary, entreating that I might not be unnecessarily insulted?—I recollect a considerable correspondence between the prisoner and the Military Secretary, and I now do call to mind that that expression was used; at the same time I am clearly of opinion that when making use of that expression, the prisoner made an accusation against the Military Secretary, which was contrary to fact, and that he was deliberately picking a quarrel for his own purposes, namely, with a view to his after justification of his disobedience of my orders.

Will your Excellency produce the letter to which I refer, and allow it to be read?—I have not got the letters, they are in the possession of the Military Secretary.

By *Prosecutor.*] I beg to be allowed to object to the production of correspondence which is irrelevant to the charges.

By *Prisoner.*] So far from being irrelevant, it is strictly relevant, as disclosing the nature of the whole proceedings taken against me, and earnestness with which I deprecated their harshness, while I expressed my readiness to do all that was really required, if I were allowed to do so without being subjected to personal insult. I submit to the Court that I am most anxious to have this letter read now, as I consider it to be of the greatest importance.

By *Witness.*] I will mention that if the Court require the correspondence it can be obtained from the Military Secretary: their immediate production would cause delay.

The Court is closed.

The Court observe that whatever may have been the immediate relevancy of the letter, an entry having been made on the proceedings of the prisoner's motive, as imputed by the witness in writing it, it now appears necessary for the Court to admit it. The Court beg respectfully to request the witness to confine himself to direct replies, as the Court find themselves hindered in their desire to limit the cross-examination within legitimate bounds.

The Court is opened, and the above decision read.

The letter is produced by prosecutor.

It is read, marked E., and appended.

Your Excellency has referred to the misappropriation of certain horse gear, will your Excellency state how you arrived at this information?—That charge is prepared on certain evidence which has been before the Judge Advocate General. I do not myself know anything of it, except that a very large saddlers' bill was shown to me which had been contracted in my name by the prisoner apparently beyond my wants, certain vouchers also were shown to me as coming from the

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the saddler, and signed by the prisoner, the same being the basis of the saddler's bill.

Did Monteith & Company send in their bill for these articles of their own accord, or did your Excellency or any of your staff ask for it?—The bill was asked for subsequently to the prisoner being relieved from charge of my stables.

Did your Excellency ever ask me for explanation in regard to these things, except by summoning me to answer the charge before a Court of Inquiry?—No; but the business about the saddlery appeared to be substantiated to the best of my recollection, subsequently to his having been warned for court martial.

Can your Excellency state why the bill was asked for, and whether it was so asked for by your Excellency's instructions?—Major Gordon told me some days after he took over charge, that the prisoner had mentioned that a very large bill was due, from the saddlers in Calcutta. Major Gordon was accordingly told by me to send for it.

Supposing that I took these articles with the intention of debiting myself with them, when the bill was paid, does your Excellency consider that I had been guilty of misappropriation?—I really cannot answer hypotheses of that sort; it appears to me that the prisoner's intentions must be judged by the facts of his conduct.

If I did take those things with the intenion of recovering their value, or paying for them; could I have done so, until I closed the accounts after receipt of the bill?—I do not know whether he received the bill or not, that must rest with himself; one of my grievances against him has been his detention of all my bills and vouchers.

May I ask your Excellency to reply to the last question, which was; could I have recovered the value till the accounts were adjusted after receipt of the bill?—I presume not.

How long after Major Gordon had taken charge did your Excellency instruct Major Gordon to write for Monteith's bill?—Several days, but I cannot say exactly how long.

Has your Excellency any objection to show the correspondence regarding the transfer of the charge of the stable to Major Gordon, as well as regarding the request for Monteith's bill?—I have no knowledge of this correspondence, except that Major Gordon informed me that after there were suspicions of the prisoner's integrity, and he had to write again, that the greatest caution was taken to prevent any slur being cast upon any one. In all this I really have no knowledge, and if the prisoner wishes for this correspondence it will be better for him to call for it when Major Gordon being before the Court, might say whether or not he consents to producing it.

The correspondence on these two matters being important to me, and that regarding the transfer being signed by your Excellency yourself, may I ask your Excellency to produce it?—I have before said I know nothing at all about it. If there is any memorandum signed by me the contents of it escape me; but I am sure that no such memorandum can be relevant to the charge.

By *Prisoner*.] Will the Court allow me to produce my own copies of the correspondence; I will produce them when the Court adjourns?

Does your Excellency remember making purchases in company with myself and Captains Harbord and Christie, from Mackenzie, Lyall & Co.; and are you aware that all the purchases were debited to your Excellency's account?—I certainly did make purchases to a considerable amount of Mackenzie, Lyall & Co.; I cannot say whether articles purchased by the prisoner were debited to me in that account; I cannot say anything about it; but I do know that I yesterday paid that very bill on a corrected account, which had been sent for from Calcutta; consequently it is evident that Mackenzie, Lyall & Co. must have had correct vouchers, and that in that instance the accounts of no staff officer were mixed up with mine.

Did your Excellency see the first account sent in, and how was the "corrected account" obtained?—The corrected account was sent for about 10 days ago. I dare say I may have seen an original bill; I cannot say for certain whether I did or not. All that I can say is that the last account received from Mackenzie & Lyall involves considerable purchases besides those made on the day alluded to by the prisoner, it appeared to me to be correct, and has been paid accordingly.

Will your Excellency produce the letters, or copies of them, written to obtain the "corrected account," and state what was the nature of the correction?—I have nothing to produce on the subject; it was a simple matter of business, calling for a bill.

Will your Excellency distinctly state whether my purchases and the purchases of the other aide-de-camp were entered in the bill before it was corrected?—I have before said I know nothing about it.

Is your Excellency aware whether any other members of your Excellency's staff were supplied with any articles of horse gear, and, if they have been, does your Excellency charge them with misappropriation also?—I believe that no other officers have been so supplied, and, what is more, I am convinced that the prisoner would not have allowed them so to be supplied; but further, I would dwell on the character of the management which could admit the credit of the master to be involved for the personal advantage of the agent, whether or not there might be a distant intention of redeeming that credit on the part of the agent. It is clear that if an agent permits himself such a practice he has either a fraudulent intention or he permits himself such a laxity of conduct that at any moment he renders himself liable to be accused of fraud. It is also clear that no establishment can escape insolvency where an agent permits himself such practices. The inference is therefore perfectly clear, that no such practice or system can ever be permitted by the master of a house who preserves a right mind.

Has your Excellency made any inquiries on this point from the other officers of your staff?—No; but I rather think that the question was once mentioned in my presence as presenting an impossibility, even if there had been a wish on the part of other officers of my staff, because of the jealous vigilance of the prisoner with regard to others.

Your Excellency has charged me with debiting my private travelling expenses to your Excellency; will you state on what occasion this was done?—This was apparently done on the occasion of the prisoner's late journey from Calcutta to Simla.

Did

Did not the butler, Abbey, travel with me on that occasion, and did not he travel at your Excellency's expense?— Yes; but this man explained the almost infinitessimal amounts of the expenditure on his account during the journey; in fact nothing could be more satisfactory than his details about it.

When did your Excellency examine Abbey on this subject?—I examined him on the same morning as the Mahasoo business was investigated, at least, to the best of my recollection I believe it was the same morning. All these dates appear on the Proceedings of the Court of Inquiry.

How did the fact on which that examination was based come to your knowledge?—The man reported it himself.

Does it not strike your Excellency that it was a very natural arrangement, under the system in force, to allow Abbey to hold the purse and put all expenses down to your Excellency's account in the first instance, subject to adjustment when the accounts were closed?—Certainly not; I believe it to be quite contrary to the practice of any other officer who has been on my staff; and, granting the possibility of honest intention, it was but another instance of rendering one permitting himself such a practice liable to the gravest misconstruction, namely, of fraud; more especially when the entry was a false one.

Is your Excellency aware that the money actually paid was all my own, your Excellency's account having been overdrawn?—I am not aware of anything of the sort, and I cannot believe that my account was overdrawn, because, so far as I have ever seen of my accounts, there has been invariably a credit at the beginning of every month. Three or four days before the prisoner's journey began he received from me the sum of 4,000 rupees; namely, 2,000 rupees for the current expenditure and 2,000 rupees for the purpose of discharging some eight or ten bills, of which he showed me a list. I was about to write cheques for those bills when he proposed to me to give him the whole sum, and that he would go round to pay them, to save me trouble. I have gone into this detail to show that the prisoner received from me the money he asked for, and, as has been stated before in my evidence, I believe a debit and credit account has never been permitted between my staff officer and myself.

Where did your Excellency examine Abbey on these matters, and before whom; and who conducted the examination?—The examination was conducted in the presence of the military secretary, by myself, as before stated; Major Gordon may have been present also, but I don't know.

I am going, with the permission of the Court, to produce the original paper regarding the transfer of the stable to Major Gordon, as your Excellency has been good enough to produce some correspondence regarding Monteith's and Mackenzie, Lyall & Company's bills, and any other papers you may have regarding the stable transfer?—It appears to me that it would be absurd to produce correspondence with my tradesmen, asking them for their accounts; and, with the permission of the Court, I would say that the application should not be acceded to, as a great irregularity, and being foreign to the matter now before the Court, otherwise there could be no objection to their publication.

The Court is closed for three-quarters of an hour, with the object of deliberation and for refreshment,

The Court observe, that the Commander in Chief has stated he has no objection to the production of the correspondence, and they consider it probable that certain points which have been raised in the course of this cross-examination will be cleared up by their production. The Court therefore request the witness to have the goodness to produce the correspondence asked for.

On the Court resuming its sittings, the above decision is read out.

I have not the correspondence in my own possession, but I will direct Major Gordon to bring it with him when he appears before the Court; I hope that will meet the Court's wishes and save my time.

Your Excellency stated in your examination in chief that my application for a Court of Inquiry, composed of unbiassed individuals, was a "trap, to mystify public opinion and prevent your Excellency from doing your duty"; may I ask you to state how it was a trap?—The prisoner knows that to have granted his request would have been to have committed myself to a course which was contrary to the practice and precedents of Her Majesty's service. When an officer's character is impugned it is the invariable custom to keep all inquiries as private as possible until a case shall have been made out rendering trial necessary. In the present instance the previous investigations were at an end, and a court martial had been ordered in accordance with the warning communicated to the prisoner, when he was placed in arrest and requested to clear his character. If I had been so weak as to yield to the demand made in his most improper letter, a great scandal would have taken place without any real issue being tried, and his character would not have been absolved, because no witness who appeared before such a court could have been compelled to answer.

In your examination in chief your Excellency stated that I insulted your Excellency, as Commander in Chief, by asking for a second Court of Inquiry, composed of unbiassed men; will your Excellency produce the correspondence and have it read before the Court, this accusation being a very serious one, and contained in your examination in chief?—I have no objection to the correspondence being read.

The following letters are produced, read, and appended:

From Captain E. S. Jervis to the Adjutant General, dated 25th May 1866. Appendix F.

Reply from Adjutant General, dated 26th May. Appendix G.

Further from Captain Jervis to Adjutant General, dated 28th May. Appendix H.

May I now ask your Excellency how I insulted your Excellency as Commander in Chief by this application?—I consider it was an insult, and my opinion is not shaken by the very ingenious letter suggested to him by his counsel.

Will your Excellency explain distinctly how such an application was an insult to your Excellency as Commander in Chief; the accusation is a very grave one, and unless I am able to comprehend it, I cannot meet it?—Simply that he accused me of assembling a court of inquiry which

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which was biassed against him; I consider that he knew that he was stating a deliberate falsehood when he wrote those words. I think that the prisoner, having been 3½ years about me, must have known that it was absolutely contrary to my nature to assemble a court of inquiry for the purpose of convicting him, when it was alleged to have been convened with a view to ascertaining whether justice had been done or not. I consider that there is a suggestion of untruth running through both letters which have been read; he tries to make out that three officers of very high rank on the head-quarters staff of the army are on my staff, that is to say, under my personal influence; he must have known that these officers were chosen on account of their independence of me.

By *President.*] Your Excellency, the prisoner has asked for the protection of the Court; it is the wish of the Court, and that wish I now express on the part of the Court, that your Excellency should, in giving your evidence, refrain from all expressions and remarks that are distressing to the prisoner, and which lead to inquiries which are irrelevant.

By *Witness.*] Mr. President, I say with the greatest respect to you and the Court, that for several days I have had to undergo a fire of the most insidious questions, and my anxiety has been to shield myself from the effect of these questions, which would not have been put had the prosecutor been assisted by able counsel, as is the case with the prisoner.

By *President.*] I am sure the Court sympathize most keenly with the very painful position in which your Excellency has been placed; but it was as much for the protection of your Excellency's character, with reference to the matter now before the Court, as to do justice to the prisoner, that the remark was made.

The Court adjourns at 4 o'clock, p.m., until 11 o'clock on the forenoon of Friday the 6th July.

Eighth Day.—Friday, 6th July 1866.

The Court assembles at the same place at 11 o'clock in the forenoon.
President, Members, Judge Advocate, and Interpreter are all present.
The Prisoner and Prosecutor appear in Court.

General Sir W. Mansfield, K.C.B., &c., is called into Court, and before resuming his Cross-examination, the Proceedings of the last day are read over.

6 July.

The Court is closed.

The Court decide that the entry of the first of the preceding remarks having been incomplete, as taken down from memory, the following words, which were uttered by the President, should be added:—

"On which account we entreat your Excellency to accept the request in the spirit in which it was uttered;" and as to the second remark, the Court observe, that as the words "protection of your Excellency's character with reference to the matter before the Court," are calculated to convey a false impression, they desire to explain that they wish the sentence to stand thus, "for the protection of your Excellency's remarks from misconstruction, with reference to the matter before the Court."

The Court is opened, and the above decision read.

The prosecutor requests permission to make a short statement. This is read and entered, as follows:—

"Mr. President and Gentlemen,

"At the present peculiar stage of the proceedings, when the witness before the Court has been checked and interrupted in the course of his reply to a question put by the prisoner, I would respectfully submit for the Court's consideration, whether the answer of the witness was not, notwithstanding their first impressions, the necessary result of an irregular cross-examination, addressed to opinions and grounds of opinions, instead of to facts.

"I would, therefore, respectfully request the Court to submit the following questions for the opinion of the Judge Advocate General:—

"First.—Whether a cross-examination is legitimate, if directed, not to facts, but to opinions, and to the grounds of opinions?

"Secondly.—Whether, if a witness be examined as to an opinion, or the ground of an opinion, the only answer such witness can give in conformity with his oath must not consist of the statement of the opinion or ground of opinion, just as it was actually formed, and whether it be right or wrong?

"Thirdly.—Whether, if a witness be cross-examined as aforesaid, the answer must not be at the absolute risk of the person putting the question, and whether, it does not follow that, if the answer received be unfavourable or distasteful to the person putting the question, the proper course for such person is to blame himself, and not to claim the protection of the Court.

"I would beg to add that I am advised such reference to the Judge Advocate General for his opinion, is in accordance with precedents. The Court will, I trust, understand that the prosecution

prosecution has no wish to interrupt the proceedings."

The Court is closed.

The Judge Advocate, at the request of the Court, expresses his opinion on the several points proposed to be referred to the Judge Advocate General as follows:—

1. As a general rule a cross-examination should not be directed otherwise than as to facts; but in this case opinions have been expressed in the examination in chief, and as far as those opinions are referred to, cross-examination on them appears legitimate.

2. If a witness is questioned as to the manner in which he has formed an opinion, he can only reply by stating the grounds of the opinion as they presented themselves to his mind, irrespective of the question of those grounds appearing right or wrong to any other person.

3. It appears impossible for any person so speaking on oath to be checked or guided in the statement of the grounds of his opinion. Consequently, if the statement is distasteful to the person putting the question, it is a matter beyond help or control.

The Court having carefully considered the statement put in by the prosecutor, and the observations on the same by its Judge Advocate, determine that it is unnecessary to stay the proceedings for a reference to the Judge Advocate General. The Court assume the responsibility of checking the cross-examination when such a course appears advisable.

With regard to the prosecutor's remark that the cross-examination has been irregular, they have to observe that they consider themselves the best judges on this point; and if they have allowed great latitude in the cross-examination it has been caused in a great measure by the irrelevant matter and fresh accusations that have been brought forward in the replies of the witness.

The Court is opened, and the above read out.

The cross-examination is resumed.

The prisoner applies to have certain correspondence read.

By *Witness.*] When leave was given for certain correspondence to be read, I imagined that the prisoner referred to notes passing between him and his brother aide-de-camp. I now find that he meant something absolutely different, namely, a correspondence which ended in his being rebuked and set right for what appeared to be impropriety. The matter is absolutely irrelevant, as far as I can understand them, to the matters before the Court, but as leave has been given to read it, I have no objection myself.

During the reading of the correspondence the Court was closed, and on its being re-opened, reading was continued.

The letters are marked and appended, as follows:—

Commander in Chief to Captain Jervis, dated 13 April 1866, marked J.

Reply from Captain Jervis, dated 13 April 1866, marked K.

Memorandum by Commander in Chief for Captain Jervis, dated 14 April 1866, marked L.

Reply from Captain Jervis, dated 14 April 1866, marked M.

Letter from Major Flood, dated 15 April, with annexure, marked N. and N 2.

Letter from Captain Jervis to above, dated 16 April, marked O.

Letter from Major Flood to Captain Jervis, dated 24 April, marked P.

Reply from Captain Jervis, dated 25 April, marked Q.

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At this period enclosure of Appendix P. was not at hand, and the prosecutor was instructed to make search in view to its future production.

The Court is closed for deliberation and refreshment.

The Court is re-opened.

Does not military law itself allow prisoners to challenge members of a court martial, and prohibit members of courts of inquiry from sitting on courts martial, and on what principle are these things regulated?—

By *Witness.*] Does the Court require me to answer this question?—

The Court is closed.

The Court consider this is a matter of opinion on which they are competent to decide, and disallow the question.

The Court is opened, and the above decision read.

Re-examination by *Prosecutor.*

In his note of the 14th of May, to Major Flood, the prisoner stated that all the accusations brought against him at the Court of Inquiry were untrue, and he begged that your Excellency would ask him questions and he would explain all. Will your Excellency state why you did not accede to the prisoner's prayer?—The question was really out of my hands, except for formal inquiry, considering the very serious character of the allegations made against the prisoner. I did what I could to meet his wishes, however, by ordering the confidential committee of audit which, if reference be made to the memorandum conveyed by the Adjutant General, was a bridge for him out of his difficulties, if he could show the absence of dishonest intention. I would ask the Judge Advocate to read the last paragraph of the said memorandum.

In the correspondence which has been produced in your Excellency's cross-examination, it is stated by the prisoner, in one of his letters, that he was warned that anything he might say before the Committee of Audit might be brought against him; state if the allegation is correct, and if so, why the warning was given?—It is true. The prisoner had been placed in arrest for breach of trust, and he had been warned that I reserved to myself the right of prosecuting him on a charge of criminal breach of trust. The Committee of Audit was therefore, while friendly to the prisoner, as above stated, nevertheless such a formal investigation as in the exercise of my responsibility, I was bound to order. If the omission had been made of not warning the prisoner that what might be elicited might be used in evidence against him, it is obvious that anything which might have transpired at the Committee of Audit would have been useless for the purposes of justice. What was done, therefore, was not done then for the purposes of intimidation or of setting the prisoner against the investigation which had been ordered,

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ordered, but a procedure strictly in accordance, as I understand, with the standing orders of the army.

From your experience as chief of the staff, and in other positions, can your Excellency say whether it was the custom of Lord Clyde and other officers in high command to employ aides-de-camp in so called social and domestic duties, as a necessary consequence of their appointments? —Yes.

Is a well-established and understood military custom, as binding on those under military authority as a regulation of the service?—Yes; if in accordance with standing orders and the principles of discipline.

Examination by *Court*.

Your Excellency stated, in reply to one of the questions from the prisoner, that on sending the bill to be corrected by Messrs. Mackenzie, Lyall, & Co., it was returned corrected, thereby showing that they held the true vouchers; will your Excellency explain this?—What was meant, was that there was a bill in the house, so far as I recollect, testifying to the amount of Messrs. Mackenzie, Lyall & Co's. bills; but the items not being fully stated, it was thought right, before sending the money, to call for the bill in full detail.

Were there no items in the bill that your Excellency did not recognize as belonging to your own account?—No; the bill appeared to me to be quite correct.

The Witness withdraws.

Second Witness for Prosecution.

Major F. R. S. Flood, Military Secretary to the Commander-in-Chief, is called into Court, duly Sworn, and Examined in Chief.

Major *F. R. S. Flood.*

Did you write this memorandum* for the guidance of the personal staff of the Commander in Chief, and did you furnish the prisoner with a copy. If so, on what date?—The Commander in Chief wrote this memorandum. I furnished the prisoner with a copy of it on the 31st March 1865.

Have you ever been in charge of his Excellency's household; if so, when, and to whom did you hand over charge?—I was in charge of Sir W. Mansfield's household in the Bombay Presidency, from the month of April 1862 until the 1st May 1863, on which latter date the prisoner took it over from me.

Was this book kept by you when in charge? —Yes.

Describe it?—This was the chief book of those kept for the management of the establishment, and shows the money received by the officer in charge of the household and the way in which it was expended; this book was closed monthly.

What name did it go by?—It was called the ledger. I don't know whether that is a correct name or not, but we called it the ledger.

Were all sums received on account of his Excellency entered in that book immediately on receipt or during the month of receipt?—As received; on the dates of receipt.

At the end of the month are the balances shown in favour of the Commander in Chief, or to his debit?—During the 12 months that I had charge, I see that I had a balance in hand for 10 of those months; for the other two months there is a balance shown as due on the other side, of very small sums; one of 33 rupees odd, and the other of 14 rupees odd.

When you had no money in hand, on account of the Commander in Chief, what course did you pursue?—I made no more payments.

If more money was absolutely required, did you advance it yourself, or apply to the Commander in Chief for more?—I don't think I ever advanced money myself. I should have gone to the Commander in Chief for more money.

Was that book kept solely by yourself; if not, specify the other officers by whom it was kept? —That book was handed over to me by Colonel Kirby, and handed over by me to the prisoner.

Between what dates does it show the Commander in Chief's accounts?—From the 1st of August 1860 to the end of August 1863.

Examine the book and state if the system, as pursued by the three officers appears to be the same?—For the four months of the prisoner's incumbency, of which this book shows the ac counts, he appears to have carried on the same system. Mine and Colonel Kirby's were precisely the same.

The Court rises at 4 o'clock in the afternoon to meet again at 11 o'clock on the forenoon of Saturday the 7th July 1866.

Ninth Day.—Saturday, 7 July 1866.

7 July.

The Court assembles at the same place at 11 o'clock in the forenoon.
President, Members, Judge Advocate, and Interpreter are all present.
The Prisoner and Prosecutor appear in Court.

Major F. R. S. Flood is called into Court, and his Examination in Chief continued on his former Oath.

When did the prisoner cease to have charge of the house, this year?—About the beginning of May. I cannot say the exact date.

What is this book, and by whom is it kept?—This is a continuation of the book I yesterday called the ledger, and kept by the prisoner from September 1863 to April 1865.

Does the system of accounts in this book correspond

* App. A.

respond with that of which it is a continuation? —Yes.

What book is this, and by whom is it kept? —This is also, apparently, a ledger, kept in the first instance by Captain Christie, from February 1865 up to the 1st September 1865, when it was taken over by the prisoner and kept from that date by him.

Does it correspond, in system, with the other two?—The general system is, apparently, the same.

Then the system pursued by the prisoner in 1865 is identical with that introduced by Colonel Kirby, and followed by you and the prisoner when he took over the accounts from you?—I cannot say it is exactly the same, for, apparently, other books have been kept. I see figures here which must have reference to pages in other books, in which, probably, the details of the items may appear. In my time there was but one book kept in which the items were shown in detail.

Does that book, viz., the one kept by the prisoner, purport to show all monies received on account of the Commander in Chief on date of receipt?—Yes.

Will you look at the former books, and say when this apparent change of system first became evident?—It can hardly be called a change of system; the other book to which the figures formerly reverted to, refer, probably took the place of the bundle of vouchers which merely were kept in my time. They first appear in April 1865.

Are the figures opposite the items you mention, consecutive, and are you sure they do not refer to the number of the voucher corresponding to the item?—This is the first time I have seen the book. I cannot say (*on referring to the book*). Yes; the numbers are consecutive, there is no explanation of what they stand for.

When you kept the ledger, at what time were the accounts for each month closed?—Immediately after the last day of the month.

According to the system of all these books, which you say is the same (with the exception of the figures which are unexplained), should all receipts on account of the Commander in Chief, whether of cash from his Excellency, or of recoveries on his account, be shown in them on the actual dates of receipt?—They should be.

Do you recognise any distinction between "house" and "household" books?—No. I understand no distinction.

What are the house books as you understand them?—I think I can enumerate the house books that were kept in my time. The butler had two books, one for daily expenses and the other for sundry expenses. There was a servants' wages book and a stable book. There was a wine account book and a store account book; there was an inventory of property book; there was a book in which open accounts with tradesmen, both in England and India, were shown; there was a letter book; a rough diary, and what has been called the ledger; all bills and receipts being kept as vouchers.

Was it your habit to keep all these books up to date?—Yes.

Will you describe this book to the Court, giving also first and last dates?—This book dates from April 1860 to the end of December 1861. At one end is shown the consumption of wine and stores in each month, and at the other end is shown the receipts and balances of both wines and stores for each month.

This is the wine and store book in one. This book was kept before I took charge of the establishment.

Will you look at it carefully, and say if the expenditure shown purports to be on account of his Excellency only, or whether there are issues to others, and also if the receipts show any recoveries from others?—The consumption appears to have been exclusively on account of his Excellency the Commander in Chief. The only receipt from any individual except shopkeepers, is apparently a dozen of champagne from Mr. Mansfield, which I presume he had borrowed on some occasion.

Describe these papers to the Court?—One of these papers is an account of the consumption of wines and stores from 4th November to 12th December 1861, when his Excellency was marching through the Southern Mahratta country. The other papers contain an account of the consumption of wines and stores from the 22nd December 1862 to the 3rd March 1863, when his Excellency was marching through Guzerat and Rajpootana.

Will you examine them in the same manner as you did the last book?—The whole of the consumption appears to have been on account of his Excellency the Commander in Chief, with exception of one item, 6th November 1861, when Colonel Phayre, Quartermaster General of the Bombay army, appears to have been lent a tin of bacon.

Do you recognise the handwriting in which these papers are kept?—Parts of them I do; they are in the handwriting of the first and third clerks of the Military Secretary's Office of Bombay. I also recognise another handwriting, that of the second clerk of that office.

Describe these books. What do the entries purport to be; are they according to the form and system which obtained when you had charge of the household?—Yes; they are apparently his Excellency's wine and store books, from April 1865 to May 1866.

Look at the October pages, and say if any of the expenditure purports to be on any other account than that of his Excellency?—The whole expenditure appears to have been on account of his Excellency.

If any of this expenditure has been incurred on other accounts than that of his Excellency, will these pages show incorrect entries?—Decidedly.

By *Prisoner.*] I submit to the Court that this is merely a matter of opinion.

By *Prosecutor.*] It is the opinion of an officer who has himself kept the accounts.

By *Prisoner.*] Nevertheless an opinion.

Look at the first ledger from August 1860 to August 1863, and say if any refunds or recredits to his Excellency's account appear?—Beyond the ordinary house accounts, I see only one or two instances of recovery of money from Dr. Hadaway and Colonel Phayre on account of mutton;

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mutton; those officers at their own request, and as a favour, having been allowed to get the surplus mutton from the establishment when a sheep was killed. These entries were—

On the 22nd June 1861, 14 rupees were recovered from Dr. Hadaway, "for mutton."

On the 24th October 1861, there is an item of *Rs.* 45. 6. on account of "mutton up to the 30th September 1861," from Dr. Hadaway.

On the 3rd November 1861, there is an item of 48 rupees recovered from Colonel Phayre on account of "mutton up to the 30th September 1861."

In January 1862, I come to two small items of *Rs.* 4. 6. received from Colonel Thesiger, as farrier's expenses, for shoeing their horses when on the line of march.

Again, in February, there are two items of recovery from staff officers on the same account; namely, *R.* 1. 4. from Colonel Phayre, and *Rs.* 2. 12. from Dr. Hadaway.

On the 3rd May 1862, there is a recovery from Dr. Hadaway of *Rs.* 17. 14. 4. for grain which he had.

On 25th September 1862, a receipt of *Rs.* 70. 4. from Dr. Hadaway for mutton, from 8th March to the 22nd September 1862, and on the same date from Colonel Phayre on account of mutton, from November 1861 to 22nd September 1862, *Rs.* 76. 12.

On the 1st of November 1862, a recovery from Dr. Hadaway of *Rs.* 6. 4. for mutton, for September and October 1862.

In February 1863, there are recoveries from certain staff officers for shoeing horses on the line of march. Colonel Stock, *Rs.* 6. 12.; Colonel Skinner, *Rs.* 4. 8.; Colonel Phayre, 3 rupees; Dr. Burrowes, *R.* 1. 8.; Mr. Howard, *R.* 1. 4.

In April 1863, there is a recovery from certain staff officers for shoeing horses in February of that year when marching. Colonel Stock, *R.* 1. 8.; Mr. Howard, *Rs.* 2. 10.; Colonel Skinner, 2 annas; Dr. Burrowes, 12 annas.

In May 1863, there is a recovery of *R.* 1. 8. from Major Aitcheson for shoeing his horse.

If any wines or stores had been sold on account of his Excellency, should the amounts have appeared in that book?—Certainly.

Your name appears in the other book as having received mutton, and payments appear from other officers during the time you had charge, on account of mutton; will you explain more particularly the system on which mutton was allowed to pass out of the household?—His Excellency has always been in the habit of having a flock of sheep kept on his own premises for the supply of his table. When a sheep was killed it could not all be consumed in the house without spoiling, therefore certain intimate friends or staff officers were allowed to have the surplus as a favour to them, and to save waste. No sheep was ever killed except for the use of his Excellency's household.

Can you explain what is the meaning of the refund on account of grain?—It must have been, I presume, a temporary convenience to that officer, when he could not obtain it anywhere else. On that date, 3rd May 1862, we were on the Mahableshwur hills, where I know it was difficult to procure grain. We used to bring ours from a distance of 20 miles.

Did you while in charge use wines or stores of his Excellency's for your own purposes, or those of others?—Never.

Will you explain the system of the household with regard to the provision of a table for the aides-de-camp?—The aides-de-camp lived as guests or members of the Commander in Chief's family at his Excellency's table. There was no separate table kept for them.

Could the aides-de-camp get wines or stores from his Excellency's cellar for their own use. For instance, when they gave parties, could they send for wine and stores to their own rooms, or to their own houses when they lived away from the house?—No.

Was such a practice known as drawing on the cellar on any one's account, and refunding at some future date, and repaying in cash for what was taken?—There was no such practice allowed. Acts of neighbourly assistance were not forbidden by the Commander in Chief; in fact, they had his Excellency's sanction. But such acts of assistance, as far as my recollection goes, were very rare, and the articles were usually repaid in kind.

Has Captain Jervis, since he assumed charge in the Presidency, mentioned to you having used wines or stores on his own account, at Mahasoo or elsewhere?—No.

When Captain Jervis was at Mahasoo, was he in attendance on the Commander in Chief?—No.

When not in actual attendance on his Excellency, is it usual for aides-de-camp to live at his expense?—No.

Is this rule well understood?—It should be.

Has the prisoner ever mentioned to you that he had taken for his own use any articles of stable gear or horse clothing, ordered in the name of the Commander in Chief?—No.

As the officer in charge of the household, would you consider that you had authority to include in orders from tradesmen, on his Excellency's account, any articles for your own use or that of others; did you ever know such a practice to be followed by an officer in charge?—No; I should not consider myself so justified; and I do not remember any instance of its having been done.

Are you aware if, during the last cold weather, any officer of the personal staff (not including the prisoner) received any articles for his own use which had been purchased in the name of the Commander in Chief?—No; I am not.

When not in attendance on the Commander in Chief, you have stated that the expenses of aides-de-camp are not defrayed by him; when travelling with his Excellency, are the hotel bills of the aides-de-camp paid by the Commander in Chief?—No.

Can you mention any particular instances in illustration of your answer, which have happened recently?—I myself, when travelling with the Commander in Chief, have not charged him with my hotel expenses, nor have I permitted others to do so, when I have been in control, as on two late occasions, namely, travelling towards Calcutta last autumn, and back this spring.

When his Excellency came round from Bombay in April 1865, and he was at the Umballa Hotel, were you asked what the system had been?—To the best of my recollection, I was referred

referred to by Captain Christie, when I gave him my views on the subject, as shown in the preceding answer.

Did the prisoner ever tell you that he had charged to the Commander in Chief his road expenses on his journey up from Calcutta in March last?—No; he did not.

The Court rises temporarily, and on the Court resuming its sittings, the examination in chief is continued.

You stated yesterday that during the 12 months you were in charge, the monthly balances were during 10 months in favour of the Commander in Chief, and in the other two showed a small debit; will you now examine the three ledgers, and show what the monthly balances under the other officers have been?—From August 1860 till April 1862, which was the time Colonel Kirby had charge of the establishment, apparently there was a balance in hand on the last day of each month, except for August 1861, when the accounts exactly squared. From the 1st May 1863 to the end of February 1865, during the prisoner's incumbency, a balance in hand is shown each month. That refers to the establishment in the Bombay Presidency. During Captain Christie's charge, from March 1865 to the end of August 1865, there also appears to have been a balance in hand at the end of each month. For the months of September, October, and November 1865, during which time the prisoner had charge of the establishment, there is also shown a balance in hand at the end of each month. This book apparently shows nothing of a later date.

Will you state the value of the several wines and stores which will be enumerated to you?—The original bills of the wines and stores not being able to be found in the Commander in Chief's house (they are supposed to be in the possession of the prisoner), a list has therefore been prepared from a Calcutta tradesman's list, which I can recapitulate:

	Rs.	a.	
Of Sherry	2	8	a bottle.
Port	2	4	„
Champagne	3	8	„
Sauterne	2	–	„
Claret	2	4	„
Beer	10	–	a dozen.
Brandy	2	4	a bottle.
Maraschino	2	–	„
Curaçoa	2	–	„
Soda-water	2	–	a dozen.
Lemonade	2	–	„
A Tin of Ham	14	–	each.
„ Bacon	4	–	„
„ Tongue	3	–	„
„ Salmon	1	2	„
„ Oysters	–	12	„
„ Sardines	–	12	„
„ Giblet Soup	1	–	„
„ Sausages	1	4	„
„ Pâte de Foie Gras	2	–	„
„ Truffles	1	4	„
„ Asparagus	1	–	„
„ Assorted Biscuits	1	8	„
Bottle of Vinegar	–	8	„
„ Mustard	–	8	„
„ Salad Oil	1	–	„
„ Mixed Pickles	–	12	„
„ Harvey Sauce	1	4	„
„ Worcestershire Sauce	–	12	„
„ Capers	1	–	„
„ Mushrooms	1	–	„
„ Olives	–	12	„
„ Apricots	2	–	„
„ Tart Fruits	1	–	„
Jar of Plum Jam	2	–	„
„ Raspberry Jam	1	–	„
Pound of Tea	2	–	„
„ Coffee	–	8	„
Loaf of Sugar	6	–	„

Did you, by order of the Commander in Chief, order the prisoner to attend a committee of audit, of which you were president, on the 22nd of May last; is this the correspondence?—I did; this is the correspondence.

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The correspondence is read, and entered:

"My dear Jervis, 22 May 1866.

"The Commander in Chief having directed that you are to furnish your accounts to my committee, forbids any further delay taking place.

"I am therefore to request that you will have the goodness to come to my quarters this day, at half-past 11 o'clock, for that purpose.

(signed) "*F. Flood.*

"True copy.

(signed) "*Fred. Flood,* Major."

"Dear Flood,

"All Sir William's private accounts I could prepare, I have given him. If his Excellency will give me the books I asked for, I shall be obliged to him, as I can then complete the rest. My counsel is in communication with Sir William; pending his Excellency's decision on this communication, I do not desire to attend your military committee, for the purpose of laying before you Sir William Mansfield's private accounts.

"Very truly, &c.

(signed) "*Scott Jervis.*

"Simla, 22—5—66."

"My dear Jervis, 22 May 1866, Noon.

"The committee of which I am president has, as you are aware, been ordered by the Commander in Chief for the purpose of auditing his private accounts. Therefore, the notice sent to you this morning is carrying out his Excellency's orders. I may inform you that the Commander in Chief has distinctly declined seeing Mr. Tayler in the capacity of your counsel, it being impossible for an officer under arrest to communicate with his military superior by such a counsel.

(signed) "*Fred. Flood,* Major.

"True copy.

(signed) "*Fred. Flood,* Major,

"Military Secretary.

"Captain Jervis."

"Dear Flood,

"The communication I refer to is by letter, and can, of course, be forwarded through whatever channel Sir William may direct. Under the restrictions laid in your letter to Mr. Tayler, the interview so graciously granted by Sir William has been declined, under the impression that it would engage his Excellency's time to no purpose.

"Very truly, &c.

(signed) "*Scott Jervis.*

"Simla, 22—5—66."

By *Prisoner.*] May I beg that the correspondence with Mr. Tayler may be read, as well as other letters connected with it?

The Court is closed, and the Court decide to go on with the evidence produced by the

Major F. R. S. Flood. 7 July 1866.

prosecutor, leaving the prisoner to arrange for further correspondence being produced in cross-examination.

Did Captain Jervis attend the Committee on 22nd May, as ordered?—No; he did not.

What did you then do?—I reported the matter to the Adjutant General, and adjourned the Committee.

Is this a copy of your report?—Yes.

The letter from Major Flood to the Adjutant General, dated 22nd May, is read, marked R., and appended.

At this stage the Witness, by direction of the Court, produces the memorandum referred to in evidence as continuation of Appendix P. It bears Captain Jervis's signature, in acknowledgment of his having read it. It is read, and a copy marked P Q, and appended.

Cross-examination by *Prisoner*.

Are you aware of any correspondence having taken place between myself and Colonel Stewart, regarding any of the books which you have seen and described to-day?—I have no personal knowledge of it.

Will you explain what you mean by "personal knowledge;" I asked you whether you were "aware" of the fact. What knowledge have you of that fact?—I have no knowledge of it. I omit the word "personal" from my former answer.

Did the Court of Inquiry impound any of these books against my remonstrance?—I know nothing about the Court of Inquiry; I was merely a witness before it.

Were any of these books in the possession of the Committee of Audit?—No; they were not.

What was the character of the Committee of Audit; be so good as to describe it?—It was a confidential committee for the purpose of auditing his Excellency Sir William Mansfield's private accounts, as kept by the prisoner from the 1st September 1865, and for the purpose of allowing him an opportunity of making any explanation with regard to those accounts that he might wish.

Had any explanation been called for from me before the committee was appointed?—More than one opportunity of explanation had been given. The accounts had been called for.

Will you be so good as to answer the last question?—I have already said the accounts had been called for; the prisoner evinced great backwardness in furnishing them; the committee under reference was ultimately appointed.

The Court adjourned at 4 p. m., until 11 o'clock on the forenoon of Monday, the 9th July.

Tenth Day.—Monday, 9th July 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon. President, Members, Judge, Advocate, and Interpreter, are all present. The Prisoner and Prosecutor appear in Court.

Major F. R. S. Flood, is called into Court, and his Cross-examination resumed on his former oath, the Proceedings of the Ninth Day being first read over.

Major F. R. S. Flood. 9 July 1866.

Was the correspondence that you have read, the whole correspondence, or were there not many other letters on the subject of the Committee of Audit?—A considerable demi-official correspondence passed between me and the prisoner.

Was not an official explanation submitted explaining why I was unwilling to attend it?—I do not remember receiving any letter but what has been read. I can verify any such document, if shown to me.

By *Prosecutor*.] Specific order was given on the 22nd May to attend the Committee on that day. I would submit that correspondence before and after the 22nd cannot relate to the disobedience of orders on that date. I would respectfully submit that if the prisoner considers subsequent correspondence necessary to explain his non-attendance and non-compliance with the order, he should produce it in his defence.

By *Prisoner*.] The correspondence commences before the 22nd, and my explanation, which was mentioned in Mr. Tayler's letter of the 22nd, was sent in on the 23rd, and contains my reasons for not wishing to appear. I submit that it is of very grave consequence to me to have the correspondence read at once.

The Court is closed.

The Court decide to receive the correspondence; the Court is opened, and the above decision read.

The witness states as follows:—I identify a letter from myself to the prisoner, of the 15th May. A copy of a letter of same day, from the prisoner. Also a copy of a letter from the prisoner to me, dated 16th May; a letter from myself, of same date, to the prisoner. I identify a letter from myself to the prisoner, dated 18th May; also a copy of a letter from the prisoner to me, dated 19th May. I identify a copy of a letter from the prisoner to me, dated 18th May; a letter from myself to the prisoner, dated 18th May; a copy of a letter to me, dated 19th; from myself to the prisoner, dated 19th; a letter from myself to the prisoner, dated 21st; a copy of a letter to me from the prisoner, dated 21st; a further letter from

from myself, dated 21st; a copy of a letter from myself to W. Tayler, Esq., dated 21st May, in answer to one in original which I identify; a letter from myself to the prisoner, dated 22nd May, which has already been before the Court; another letter of the same date, which also has been read; a copy of a letter from the prisoner of the same date, which has already been read; a letter without address, which I believe was addressed to me from Mr. Tayler, dated 22nd May. Also a memorandum, by the prisoner, to me, without date, forwarded on the 23rd May; a letter from myself to the prisoner, dated 23rd May. One or two that I have not identified have apparently been through the Adjutant General's Department.

The correspondence being now completed by the papers handed in by the prosecutor, is here marked as follows, and appended, Appendix B. being first re-read to the Court, and the remaining papers of this series in continuation.

Major Flood to Captain Jervis,	dated	15 May 1866.	App. S.
Captain Jervis to Major Flood	„	15 May 1866.	App. T.
Major Flood to Captain Jervis	„	15 May 1866.	App. W.
Captain Jervis to Major Flood	„	16 May 1866.	App. V.
Major Flood to Captain Jervis	„	16 May 1866.	App W.
Captain Jervis to Major Flood	„	16 May 1866.	App. X.
Captain Jervis to Major Flood	„	18 May 1866.	App. Y.
Major Flood to Captain Jervis	„	18 May 1866.	App. Z.
Major Flood to Captain Jervis	„	18 May 1866.	App. A. A.
Captain Jervis to Major Flood	„	19 May 1866.	App. A. B.
Captain Jervis to Major Flood	„	19 May 1866.	App. A. C.
Major Flood to Captain Jervis	„	19 May 1866.	App. A. D.
Major Flood to Captain Jervis	„	21 May 1866.	App. A. E.
Captain Jervis to Major Flood	„	21 May 1866.	App. A. F.
Major Flood to Captain Jervis	„	21 May 1866.	App. A. G.
W. Tayler, Esq., to Major Flood	„	21 May 1866.	App. A. H.
Major Flood to W. Tayler, Esq.	„	21 May 1866.	App. A.I.
Major Flood to W. Tayler, Esq.	„	21 May 1866.	App. A. K.
W. Tayler, Esq., to Major Flood	„	22 May 1866.	App. A. L.
Major Flood to Captain Jervis	„	22 May 1866.	App. A. M.
Captain Jervis to Major Flood	„	22 May 1866.	App. A. N.
Major Flood to Captain Jervis	„	22 May 1866.	App. A. O.
Captain Jervis to Major Flood	„	22 May 1866.	App. A. P.
Captain Jervis to Major Flood	„	23 May 1866.	App. A. Q.
Major Flood to Captain Jervis	„	23 May 1866.	App. A. R.
Memorandum from Captain Jervis to Major Flood	„	23 May 1866.	App. A. S.

By *Prosecutor.*] May I beg the Court to record on its proceedings that the prisoner's explanation of the 23rd of May relates to matters totally unconnected with the charges, and has been produced with the permission of the Court at the express desire of the prisoner, and contrary to the wish of the prosecution.

Does not this correspondence show that at the very time I "neglected to attend the committee," I had respectfully and deferentially laid the whole question before his Excellency for consideration?—It appears to me, from this correspondence, that his explanation was subsequent to his non-attendance at my committee.

Did not Mr. Tayler's letter of the 22nd May state that an explanation would be sent the next day?—Yes.

As you had several times postponed your sittings, and for far less important reasons, what prevented your postponing it again, when I told you I had referred the matter to his Excellency?—It was his Excellency's order that no further delay should take place; I communicated that order to the prisoner.

Was that order given in ignorance of the remonstrance made both by Mr. Tayler and myself, or after reading those remonstrances?—It was after receipt of Mr. Tayler's first letter of the 21st May.

Kindly answer the last question distinctly?—I have no further answer to make; I submit to the Court that I have answered it very distinctly.

Major *F.R.S.Flood.*

9 July 1866.

By *Prisoner.*] I submit to the Court that it is no answer to my question.

Did you not consider it would have been fair, both to his Excellency and myself, to have postponed the sitting for half an hour, till you could ascertain the pleasure of his Excellency with reference to two such formal and earnest remonstrances as had been made?—I beg to submit to the Court that I am here to state facts, and not opinions.

By *Prisoner.*] He is asked to state a fact, and not an opinion.

I asked you, as a fact, whether you did not at the time so consider, and not what your opinion is now?—I should like to have the dates of those remonstrances, when I could answer more clearly. I did adjourn the committee on 21st May, after receiving Mr. Tayler's letter, which will be seen from the correspondence just read. On the 22nd I communicated the Commander in Chief's orders that no further delay was to take place.

Did I ever attend the Committee of Audit, and on what occasion; and what took place when I attended?—The prisoner attended the committee on, I believe, the 16th of May, and handed in an account with reference to some building that he had charge of. The committee received the account, and told the prisoner that he need not attend unless he wished it, as the committee would go through it at their leisure.

Had the Committee of Audit anything to do with the alleged misappropriation of stores, or the Khansamah's bazaar account?—Nothing.

Did you examine any tradesmen or coolies in connection with the building account in my absence?

The question is objected to by the prosecutor, and withdrawn.

You stated yesterday that none of the books you identified had been made over to the Committee of Audit; will you read this note from Colonel Stewart, and say what book it refers to, and what is the meaning of it?

The note is read and entered:

"My dear Jervis,

"The book has passed out of my hands, and is now with his Excellency; but I have transferred your note to Flood, and have told him that there can be no objection to your getting the account you require, and I hope he will send it to you as soon as possible, if the Commander in Chief has no objection.

"Yours sincerely,

"15-5." (signed) "*D. M. Stewart.*"

Witness.] I cannot say what book it refers to, except that it was not in my possession. No books were handed to me by Colonel Stewart.

Was the note of which this is a copy transferred to you?

"My dear Colonel,

"Kindly let me have the book I gave you yesterday; I will return it this evening. It has a cash account in it of mine from 1st September to end of November, the amounts of which I want, to complete my general statement to show to-morrow.

"Very truly yours,

"To Col. D. M. Stewart, (signed) "*S. J.*

"D. A. G." "15-5-66."

Major F. R. S. Flood. — 9 July 1866.

Witness.] I think I have seen the letter, but I cannot say whether it was transferred to me or not; it very likely was.

If it was transferred to you, why was it, and what did you do?—I really cannot say; being made the general channel of communication with the Commander in Chief, it is quite impossible for me to remember every demi-official note that passes through my hands.

I twice asked you a plain question on Saturday, namely, whether any explanation had been called for in the matter of the accounts before the Committee of Audit was convened; will you now oblige me by giving a direct answer?—The accounts were not furnished, therefore no explanation regarding them was asked for.

You referred on Saturday to the hotel bills last year at Umballa; can you state exactly how these bills were prepared?—No, I cannot.

At that time you say you had communicated to Captain Christie that none of the personal staff's charges were to be included in his Excellency's bills?—I beg to refer to my answer on Saturday.

Will you look at this, and say what it is?—It is a bill of the Umballa Hotel, made out in the name of Captain Christie, aide-de-camp, for the accommodation of the Commander in Chief himself, and Captain the Honourable W. Harbord, from 25th March to 9th April 1865.

The bill is read, marked A. T., and appended.

Is this the system you described, and under which you stated that the accounts were never mixed up when his Excellency was travelling with his staff?—I am not answerable for that bill; I never saw it before to my knowledge.

How and by whom was this bill paid?—I really do not know.

Will you look at this book, page marked, and say how that expenditure is entered (Note.—the book referred to is, as called by prisoner, a cash book, and has been called by the witness Captain Christie's ledger for April 1865.)?—It is entered simply as hotel bill at Umballa, *Rs.* 288. 14., the full amount of the bill. On the opposite side I see, credited to the Commander in Chief, Captain Harbord's share of the bill, 20 rupees, and Captain Christie's, 60 rupees.

The Court is closed for 20 minutes for refreshment.

If the charges of the personal staff were included in his Excellency's bill, and paid in his account, out of his money as now appears by this bill, how could you on your oath say that such things never did occur?—I am not aware that I did say that travelling expenses were never mixed up; but the mere fact of this Umballa Hotel bill being charged in lump to the Commander in Chief, and Captains Christie's and Harbord's share being credited to his Excellency, does not show a mixing up of accounts; I object to being reminded that I am on my oath.

Have you ever repaid the item that appears against your name in that bill?—No item that I am aware of appears against my name in that bill.

The item is, "Note, coolies from 25th to Captain Flood and others" 6 annas?—I submit that is an item against the Commander in Chief, probably for carrying notes to me. It may explain matters if I add that I was not living in the hotel with the Commander in Chief.

When on Saturday you read out in detail all the "recoveries" with the view of proving that such recoveries were very rare, how came you to omit such important items as these?—That book was not in my hands at the time I made that reply; I think the books in my hands only referred to Sir W. Mansfield's time while in the Bombay Presidency, and with this remark I think I concluded my answer.

Looking at the book, will you now state what interval occurred between the payment of the hotel bill, and the recoveries from the personal staff of their shares?—The bill apparently was paid on the 12th April; there is no note opposite the item; but that is the last preceding date. There is no date opposite to any of the sums credited to the Commander in Chief in April; the credit was in that month.

Was the custom of allowing individuals to have their horses shod by his Excellency's farrier, and afterwards recovering the value, only carried out on the line of march, or at other times?—Only, as far as I recollect, on the line of march to people beyond the personal staff.

You have stated that I allowed my hotel expenses to be charged to his Excellency when travelling with the butler "Abbey;" have you seen the bill, and can you produce it?—I have stated nothing of the sort.

When, as you have stated, you kept all your books up to date; what assistance had you?—I had the assistance of a clerk.

You have stated that all accounts were brought up to date, and each month's account closed immediately after the end of the preceding month. Can you explain, if this were the case, why such delay occurred in recovering the value of the mutton sold by his Excellency?—I presume because the accounts were not rendered to the officers in question; I can state from my own knowledge that immediately they were rendered they were paid during my incumbency.

You have stated that I never told you that I had borrowed any stores or horse gear; will you say whether I was under any obligation to mention such things to you?—No.

Re-examined by *Prosecutor.*

You received a positive order from his Excellency not to allow any further delay in proceeding with the audit of the account. Did this order preclude any adjournment pending a reference to his Excellency by the prisoner, whatever the nature of that reference might be?—Yes.

By *Prisoner.*] I would suggest that this is merely a matter of opinion.

You stated that the prisoner came to the committee on the 16th, and that he was permitted to withdraw. Did you give him to understand that he would not be required again?—I said that if his attendance was required, we would ask him down to my quarters again.

You stated that one of the objects of the committee was to audit his Excellency's general accounts; why did the committee not enter upon this examination?—Because they were not furnished to the committee by the prisoner.

Did the committee intimate to him that they were ready to enter upon this examination?—Yes.

By *Judge Advocate.*] If the examination of general

general accounts had been proceeded with, would the question of the stores alleged to have been misappropriated, and of the Khansamah's bill, have come under consideration of the Committee of Audit?

By *Prisoner.*] May I ask under what law the Judge Advocate puts questions?

By *Judge Advocate.*] It is according to the practice of courts martial, according to my experience of 10 years in the Judge Advocate General's Department.

By *Prisoner.*] I submit to the Court that it is utterly illegal.

The Court is closed.

The Judge Advocate having shown authority for the practice, the question is allowed.

—The orders for the committee were that they should exercise a searching audit of the whole of Sir W. Mansfield's accounts; so if any facts of misappropriation had come to their knowledge during the audit of accounts, they would of course have been noticed.

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Examination by the *Court.*

You have stated in your examination in chief that the prisoner took over the account book from Captain Christie on the 1st September 1865; are you aware whether any certificate of "receiving" and "taking over," passed between the prisoner and Captain Christie, as is done between presidents of mess committees of regiments?—No, I am not aware; but I should think that no such certificates passed.

You stated in one of your replies that the Committee of Audit had nothing to say to the alleged misappropriation of stores. The third charge distinctly states that the committee was appointed to inquire into first and fourth instances of the first charge; the first instance refers to the stores; can you explain this?—I have not had the charges read over to me.

The Court adjourns at Four o'clock, p.m. until Eleven o'clock To-morrow forenoon.

Eleventh Day.—Tuesday, 10th July 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon; President, Members, Judge Advocate, and Interpreter, are all present.

Major F. R. S. Flood is called into court, and his examination by Court resumed.

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In continuation of the last question, will you state whether, as President of the Committee of Audit, the instructions conveyed to you were such as to require you to investigate the matters of the stores?—When I said that the Committee of Audit had nothing to do with the case of misappropriation of stores, it would have been more correct to say that they received no direct instructions regarding that point; but, as I have said in a former answer, if such facts had come to their knowledge, they would have been taken notice of.

The Court put the last question as a continuation of one under reply, desiring the prisoner to hold over, until it was answered, a statement which he desired to read on the subject of the Judge Advocate examining witnesses.

The statement is now read and entered.

"I submit the following remarks on the question mooted at the close of yesterday's sitting for the serious consideration of the Court.

"The power to examine witnesses is a power specially conferred by law, and cannot be exercised by any individual in the world, except by those upon whom it is thus conferred.

"The persons empowered by law to examine witnesses, are,

"1st, The prosecutor;
"2nd, The prisoner;
"3rd, The Court.

"This is so clearly and incontrovertibly laid down, that for any other party to arrogate to himself this specific privilege is, I submit, altogether unjustifiable.

"No mere dictum of a Judge Advocate General can override the law; and thus the authority yesterday produced by the Deputy Judge Advocate General, is no authority at all.

"But it is not only that the unauthorised assumption of this power is illegal, but it is also clearly opposed to the essential character of the Deputy Judge Advocate General's functions, as laid down in all the standard works of military law.

"Without troubling the Court with any detailed exposition of this part of the subject, on which the Court itself is doubtless well informed, I will merely quote the directions so emphatically recorded by D'Aguilar on Courts-martial, a work which, I need hardly remind the Court, is officially declared to be the authority on all such questions.

"This work lays it down as a positive rule that the Deputy Judge Advocate General 'should maintain an entirely impartial position,' and again that 'he should take no part in the conduct of the prosecution.' I need hardly say that the rule in this same memorandum, that 'the opinion of the Deputy Judge Advocate ought to be conclusive upon any point of law or procedure which arises,' can only refer to points not clearly laid down, not to points on which the law and the rule is clear, specific, and beyond question.

"In the present case the answer on oath of the witness (his Excellency's military secretary) had entirely

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entirely destroyed one of the principal charges brought against me, inasmuch as he had distinctly and unequivocally declared that the 'Committee of Audit' had nothing to do with the very matters for the investigation of which the charge declares the committee was assembled.

"Was it 'maintaining an entirely impartial position' for the Deputy Judge Advocate to come forward at such a crisis, and endeavour by a leading question, or by any question at all, to patch up the wounds in the prosecutor's case.

"Was it not directly 'taking part in the prosecution,' in direct violation of the rules laid down for his guidance, thus to thrust himself forward to my prejudice, in support of the prosecution.

"I submit this question as one of the most important that can arise for the Court's decision, not only as regards the particular instance now under discussion, but with reference to the whole conduct and procedure of the Deputy Judge Advocate, past, present, and future.

"I submit for the Court's grave consideration, whether the Deputy Judge Advocate has not from the first taken, more or less, 'a part in the prosecution' against me, and I respectfully appeal to the President and Court, to afford me efficient protection from such illegal pressure, by issuing a stringent prohibition against any such procedure in future. Should the Court consider the view which I have submitted to be correct, I would hope that the question put by the Deputy Judge Advocate General be expunged from the proceedings.

(signed) "*Scott Jervis.*"

By *Judge Advocate.*] I have already stated to the Court what has been the practice of Judge Advocates at general courts-martial for many years. When the position of Judge Advocate was directly referred to in the Articles of War, the question was referred by the Judge Advocate General of this army (in August 1864) to the Right Honourable the Judge Advocate General at home as to the duties of Judge Advocates, and it was distinctly stated that it was the duty of the Judge Advocate to put such questions as may be necessary to elucidate the matters before the Court. I deny that I have taken any other than an impartial position. I had at the first to give opinions on the prisoner's pleas, and to give, perhaps, other opinions which the prisoner may consider contrary to his interests; this was done in the discharge of my duty.

The court is closed, and the Court adhere to the practice of courts-martial in India to permit the Judge Advocate to put questions.

The court is opened, and the above decision read.

The Witness withdraws.

Third Witness for Prosecution.

Captain the Honourable W. HARBORD, Aide-de-Camp to the Commander in Chief, is called into Court, duly sworn, and Examined in chief.

Captain Hon. *W. Harbord.*

How long have you been on his Excellency's staff?—A year and two or three months.

Between what dates was Captain Jervis at Mahasoo in the autumn of last year?—From September until he left Simla, in November.

Was he living in his own residence or the Commander in Chief's?—In his own residence.

Do you remember the date of the last large entertainment at Barne's Court?—I do not know the exact date, but it was in September.

Did the prisoner entertain at Mahasoo, and if so, did you join in any of the entertainments, and did any other member of his Excellency's staff join in them to your knowledge?—The prisoner did entertain at Mahasoo; on two different occasions I joined in the expenses of the entertainments with the prisoner. No other member of his Excellency's staff joined in them to my knowledge.

Have you paid your share of the entertainments?—Yes.

Will you state in what manner the payment was made?—I left a cheque at Simla with the prisoner for the purpose of paying a Bunneah's bill. The Bunneah was not satisfied with the amount, so the prisoner cashed the cheque, and appropriated the money in payment of my Mahasoo expenses.

When did you leave Simla?—On the 15th October.

How do you know that the cheque was not appropriated to the purpose for which you gave it to the prisoner?—The prisoner wrote to me from Simla. I have not the letter, which I tore up in the usual manner. The letter I received at Meerut stated that he had appropriated the money for the purpose previously stated.

Are you in possession of the cheque, and can you produce it?—Yes, the cheque is handed into court for 220 rupees, drawn on 14th October by Captain Harbord in his own favour, and accompanied by a note, signed by Captain Scott Jervis, and identified by witness as prisoner's signature, requesting the amount to be credited to his own account.

The cheque and note are appended, marked A. W. and A. U. Q.

After receiving the letter from the prisoner when you were at Meerut, did you consider that your liability on account of the expense of the Mahasoo entertainments had ceased?—Yes.

Since that time has the prisoner made a demand upon you on account of these entertainments?—No.

Has he ever repaid or offered to repay to you the 220 rupees which you say the Bunneah would not take from him on your account?—No.

When you joined in the entertainments, did you know what arrangements the prisoner had made for the supplies?—I know the prisoner gave orders to the Commander in Chief's Khansamah to supply stores and eatables.

Do you know where the wine came from?—No, I do not.

Do you know how many entertainments the prisoner gave altogether at Mahasoo, and their extent?—I do not know the number, but they extended over the time that he was staying out there.

I mean how many people were entertained?—Several people on different occasions.

How many were there on the two occasions in which

which you joined?—Twelve or 14 people on each occasion.

When Captain Christie had charge of the Commander-in-Chief's household, did you join in any picnics; and if so, who shared in these picnics?—Yes; Captain Christie, the prisoner, and myself joined in a picnic.

Who provided the tiffin?—The Commander-in-Chief's khansamah.

Do you know if he was paid, and when?—I know he was paid, but I could not say the date except that he was paid immediately after the picnic took place.

When not in attendance on the Commander-in-Chief, has the expense of your table ever been paid by his Excellency?—No.

Have you ever received from the prisoner any articles of horse clothing or stable gear which had been ordered in the name of the Commander-in-Chief?—No.

Has the prisoner ever mentioned to you that he had taken for his own use any such articles so ordered?—No.

Do you know from what tradesman in Calcutta the Commander-in-Chief's horses were supplied with clothing during last winter?—Yes, Monteith's.

Do you know if Captain Jervis during last cold weather at Calcutta, dealt with Messrs. Monteith & Co. on his own account?—Yes, I know that he had boots made there.

Can you state when this fact came to your knowledge?—During our stay in Calcutta, about the month of December or January.

Since you have been on his Excellency's staff, have you ever travelled except in attendance on him?—Yes.

State when?—When I left Simla last year, on the 15th October, I went to Meerut, to meet the Commander-in-Chief there.

Have you ever preferred a request that your expenses, or any portion of them on this occasion, might be paid by his Excellency?—No, never.

When travelling with the Commander-in-Chief, are your hotel bills paid for you; on how many occasions have you travelled in attendance on his Excellency?—To a certain extent hotel bills have been paid; that is, we never paid for our dinner when dining with his Excellency, but other charges we defrayed ourselves. I have travelled on several occasions with his Excellency, but could not say the number.

When you joined his Excellency's staff at Umballa, in April 1865, was this principle observed?—Yes.

Have you seen this bill before (App. A. T.); who paid it?—Yes. I paid it myself.

Under what circumstances?—Captain Christie was sent on to Simla, and handed over to me a sum of money to pay the Commander-in-Chief's expenses.

How and when did you account to Captain Christie for this money?—On arriving at Simla, I handed over to Captain Christie the account, and asked him to what extent we had to pay in the bill presented by me. He said he thought it had better be referred to Major Flood to decide, which was done.

Did you pay any share of the bill, and when?—Yes; immediately on arrival at Simla.

When you are travelling with the Commander-in Chief, does he defray any incidental road expenses which are not discharged by Government?—No.

Has the prisoner ever mentioned to you that on his journey up from Calcutta to Simla, in March last, he had charged the Commander-in-Chief with his travelling expenses?—No.

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Cross-examined by *Prisoner.*

The Court is closed to consider the following questions handed in by the prisoner.

1. Were you ever dismissed from a Masonic Lodge?

2. Was your name withdrawn when proposed as a member of the Bengal Club, because it was known you would be black balled?

3. Were you last year publicly assaulted at the club at Simla?

The prisoner also puts in this note.

"I respectfully beg that these questions may be put. The general character of the witnesses who give evidence against me is one of the points in my defence, and the law distinctly allows me to put such questions."

By *Judge Advocate.*] The prisoner has a right to put questions affecting a witness's character, and thereby his credibility. It is stated in "Taylor on Evidence," vol. 2, p. 1137, as quoted in "Goodeve on Evidence," p. 247: "So questions respecting alleged improprieties of conduct, which furnish no real ground for assuming that a witness who could be guilty of them would not be a man of veracity, might very fairly be checked." I therefore submit that the Court should consider in their own minds whether admissions by the witness of what is alluded to in the several questions would affect their opinion of the witness's credibility.

The Court decide to disallow questions Nos. 2 and 3, and will reconsider No. 1, if the question is altered so as to intimate the alleged cause of dismissal from the Mason's Lodge, as at present they are not in a position to judge whether the dismissal, if it occurred, will affect the witness's credibility.

The Court is opened and the above read out.

By *Prisoner.*] I would sooner reserve the whole question for my defence.

The Court rises temporarily for refreshment.

By *Witness.*] Several questions having been put by the prisoner affecting my character and recorded, I beg leave to answer them, with a view to remove the impression which might be imbibed from them.

The Court direct them to be put.

Were you ever dismissed from a Masonic Lodge?—I have heard that I was dismissed from a Masonic Lodge. I may add that I never divulged the secret or sign, which alone was the object of secrecy to which I imagined I was bound; but I believe the fault I committed was speaking lightly of the order, and acknowledging the preliminaries of the ceremony were correct, as stated in a published book by Carlyle on Masonry. I may have transgressed the rules of the order, but if I had seriously committed myself, the first tribunal I should have expected to have been brought before would have been my

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brother officers; but as they never even desired an explanation of the case, I imagine my character with them remained intact. I may add that Colonel Faddy was here at the time, and I believe the master of the lodge at that time, and he can state his ideas on the case, which were, that I was expelled through speaking lightly of the order; this happened in 1859.

Was your name withdrawn when proposed as a member of the Bengal Club, because it was known you would be blackballed?—I believe my name was withdrawn, but not from any personal dislike to myself; there was a hostility shown to officers who were put at that time, there having been a quarrel between the lawyers and military in the club at the time my name was put up.

Were you last year publicly assaulted at the club at Simla?—No, I was not.

Was not I put up at the same time as yourself, and by the same people, and was not I elected?—I don't know.

Was any arrangement or understanding entered into between me and you, as to the Mahasoo entertainments, or to sharing expenses; and if so, what was it?—Yes; we agreed to share the expenses of a picnic party, and an entertainment which lasted two days, to which I invited myself, certainly; three people out of the party can name them.

How were the orders given to the khansamah to supply the stores?—By Captain Jervis to the khansamah.

Did his Excellency the Commander-in-Chief ever attend the Mahasoo parties as a guest; and what other people came also?—The Commander-in-Chief did come as a guest, I believe; I can mention several people, if it is necessary to do so; I can mention about 30 people who went to Mahasoo.

Did you know that the stores belonged to the Commander-in-Chief?—I could not swear to it, as I did not see them go out of the store-room.

Should you have had any scruples about eating or drinking any of the stores at the Mahasoo parties, if you had known they belonged to the Commander-in-Chief?—I do not know about the stores, as they could have been replaced at any time; but as regards the wine, I should certainly not have partaken of the wine, or should have asked the prisoner a question regarding them, as he knew the custom of the house, and I was not supposed to know anything about it. I may add, to show my scruples on the subject, I brought up from Calcutta my own wine, having no idea that I could get it from the Commander-in-Chief.

Do you now know that the stores belonged to the Commander-in-Chief; and if so, when did you obtain this knowledge?—I have no knowledge on the subject; I can only state my impression that they were belonging to the Commander-in-Chief.

Do you now know that the wine belonged to the Commander-in-Chief, and how have you obtained that knowledge?—I do not know that it belonged to the Commander-in-Chief.

If stores could be replaced, why could not wine also be replaced or paid for?—Because people's tastes differ. The Commander-in-Chief might not have approved of wine that had been replaced in return for wine that had left his cellar.

Would the scruples that you say you would have felt in drinking the wine, and not in eating the stores, have had any reference to any moral obligation, or merely because the former could not be so easily replaced as the latter?—I should certainly have thought it excessively wrong to take wine from the Commander-in-Chief's cellars, without having previously asked his permission to do so.

What I wish to ask is, whether there would have been any moral wrong in drinking wine, but none in eating oilman's stores?—I knew nothing about the custom of the establishment, and should only have acted as my impressions of a gentleman would cause me to act; I should not have thought it gentlemanlike to take wine.

Do you know where the Commander-in-Chief's wine was bought; I mean the wine you say was used at the picnic parties?—I do not say that the Commander-in-Chief's wine was used at the picnic parties, and have not said so.

How do you know that I gave the order to the khansamah to supply the stores?—I heard the prisoner give the order myself.

Why did you give me the cheque to pay the bunneah, as you have stated?—Because I left Simla in a hurry and had no time to settle with him myself.

Had you, at the time you gave me the cheque you have produced, any account with me, and of what nature?—I am very careless about my money affairs. I am not aware of having any account with the prisoner; at the most I may have received a few rupees from the prisoner.

When you agreed to let the amount paid by you be credited to the Mahasoo expenditure, had you ascertained what your share was, and how?—No, I asked the prisoner when we were at Barrackpore to furnish me with an account, but he put it off from day to day, and has never done so yet.

Has the bunneah been paid, and by whom?—To the best of my belief he has not been paid because he declines to accept the amount that I offered him, but within the last week he has offered to take that amount.

The Witness here asks permission to make an addition to his reply in reference to the Bengal Club.

"Simply to add that at the same time I was put up, or within a few days, I was elected a member of the Calcutta United Service Club. This was after withdrawing my name from the Bengal Club."

The Court adjourns at Four o'clock p.m., until Eleven o'clock on the forenoon of Thursday, 12 July 1866.

Twelfth Day.—Thursday, 12th July 1866.

The Court assembles at the same place at Eleven o'clock in the forenoon.
President, Members, Judge Advocate and Interpreter, are all present.
The evidence of the present Witness in cross-examination is read over.

Captain the Honourable W. Harbord, is called into Court, and his cross-examination resumed.

Captain Hon. *W. Harbord.*

12 July 1866.

You heard me give the khansamah the order for the stores, and were under the impression that they belonged to his Excellency; did it ever strike you that you were, in eating them, an accomplice in misappropriation, with a view to defraud the Chief?—I had nothing to do with the management of the establishment. I had no idea at that time that the prisoner could do anything wrong, and left it entirely in his hands.

By *Prisoner.*] I must submit to the Court that that is no answer to my question.

The question is repeated.

I never thought anything about it.

Have you ever been accused of being such accomplice?—No.

If I am guilty of misappropriation, how is it that you are not guilty as an accomplice?—As I had nothing to do with the management of the establishment, I left it entirely in the prisoner's hands. I do not consider myself guilty as an accomplice.

Did you recognise the taste of the wines as those you had been in the habit of drinking at his Excellency's table?—I don't remember anything about it.

What was the exact order, as far as you remember, that I gave to the khansamah?—To supply eatables and stores for the entertainments.

Whose friends were principally invited to the ladies' picnics; mine, or yours and Captain Christie's?—Principally my own friends. I know of none of Captain Christie's friends being invited.

Have you ever bought provisions at Simla on your own account, and had the bill charged to Sir W. Mansfield?—No.

Did you receive any assistance from the prosecutor while under examination on Tuesday?—No.

What was the paper passed to you by the prosecutor?—It was sent to me by a person in court suggesting an addition to the answer I was making.

Who was the person?—Mr. Kennedy.

The Prosecutor proposes to make an explanation regarding the circumstance above alluded to.

The court is closed.

The Prosecutor's statement is read and entered.

"Mr. President,

"At the commencement of the cross-examination of Captain Harbord, three questions were submitted to the Court by the Prisoner, which he desired to put to the Witness; after consideration two of these questions were disallowed by the Court, but Captain Harbord prayed to be permitted to reply to them all, as they had been recorded on the proceedings, and contained allegations seriously affecting his character.

"With the permission of the Court he then proceeded to answer the questions seriatim. The position of the witness was a trying one. The refutation of the implied allegations must depend solely on the explanation then given before this Court. There were amongst those present, persons who are perfectly cognizant of the facts of the case, and it appeared to them that Captain Harbord's reply to one of the questions, viz., that relating to the withdrawal of his name as a candidate from the Bengal Club, did not (doubtless owing to the trying position he was placed in, and consequent discomposure), represent the circumstances of the case in their proper light. Two notes were consequently handed up to the witness, for the purpose, I presume, of informing him of the omission, and these I handed to him.

"It will be observed by the Court that the question to which they referred had already been disallowed by them as irrelevant, and therefore the answer of the witness could in no manner affect the case, but must be regarded as a personal explanation, and quite independent of his evidence on the charges now being tried.

"Under these circumstances, I respectfully submit, that I should have considered myself to blame, if I had declined to place in the hands of the witness the papers forwarded to me.

"If I have committed an irregularity, I beg to offer my most humble and sincere apologies, but I would beg to reiterate that I have myself offered no assistance either to this, or any former witness."

(signed) "*W. K. Elles,* Captain and Prosecutor."

The Court observe that the circumstance alluded to was at the time checked by the President and the practice prohibited; they consider it necessary merely to record that it was ascertained that by the proceeding, though irregular, no injury was done to the prisoner's cause.

The court is opened, and the above read.

Re-examined by *Prosecutor.*

When you left Simla in October 1865, you stated that you might have owed the prisoner a few rupees; did you make any payment to him beyond the check for 220 rupees already entered?—Yes; I gave him a cheque for the sum of 80 rupees, dated 16th October, the day I left being Sunday 15th, and I dated the cheque 16th. If I had owed the prisoner more money, I conclude he would at that time have demanded it from me: I produce the cheque marked A. V. and appended.

The court is closed for deliberation on proposed

Captain Hon. *W. Harbord.*

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proposed questions which it is decided not to put.

The Court is opened, and his evidence read over to the Witness.

The Witness asks permission to correct a statement made regarding Colonel Faddy in his answer to the first question in cross-examination on Tuesday.

I understood Colonel Faddy to tell me that he was master of the lodge up here, instead of which he was master of the Jullunder Lodge at the time, and had a circular sent to him regarding my case.

[The Witness withdraws.

Fourth Witness for Prosecution.

NUNA KHAN is called into Court, makes the prescribed solemn affirmation, and is Examined in chief through the Interpreter.

Nuna Khan.

How long were you in the Commander in Chief's service and in what capacity?—One year; I was abdar.

Were you in the Commander in Chief's service during the months of September, October, and November last year?—Yes; I engaged in his service at Umballa last year, and was discharged about three months ago. I do not know the names of Hindoostani months or English months.

Do you remember when Captain Jervis had charge of the Commander in Chief's household?—Captain Jervis took charge of the household from Captain Christie three months after the Commander in Chief's arrival, and from the first of a month; I do not know the name of the month.

Do you remember that Captain Jervis was at Mahasoo last year?—Yes, I do.

Were you in charge of the Commander in Chief's cellar, and did you keep the key?—Yes; I kept the key and was in charge.

When Captain Jervis was at Mahasoo, did you send out any wines to him?—Yes; I sent wines to him at Mahasoo.

By whose order?—By order of Captain Jervis.

Whose was the wine you sent out to Mahasoo?—The wine was the Commander in Chief's.

At the time you sent out the wine to Mahasoo did you always take your orders from Captain Jervis?—I took my orders to send the wine always from Captain Jervis.

Did you consider Captain Jervis's orders final and imperative?—I consider it was my duty to obey Captain Jervis's order.

The Court rises temporarily for refreshment.

What wines did you send to Mahasoo?—I sent all kinds; champagne, sherry, beer, sauterne, maraschino, curaçoa, sodawater, brandy, claret.

Did you send them on more than one occasion?—I sent them four times.

How much did you send the first time?—The prisoner, Captain Jervis, did not order me to write it down myself; he ordered that I was to write it down daily by the writer, in his hand, in English. The writer having recorded it, I was to show it in office at ten o'clock to Captain Jervis, for the purpose of having it signed by him.

The Court is closed.

A reference being necessary to the Adjutant General, the Court adjourns at a quarter past Three o'clock in the afternoon, until Eleven o'clock to-morrow forenoon.

THIRTEENTH DAY.—Friday 13th July 1866.

The Court assembles at the same place at eleven o'clock in the forenoon.

President, Members, and Judge Advocate are present.

Lieutenant J. F. Pogson, of the Invalid Establishment, appears as Interpreter in the room of Major H. Le C. Möller relieved from that duty, having been appointed in a letter from the Adjutant General to the President.

Lieutenant Pogson is duly sworn.

NUNA KHAN is called into Court, and his Examination in chief resumed.

13 July 1866.

By *Prosecutor.*] As the answer to the last question was recorded in a very incomplete manner, will the Court be good enough to allow the following question to be put to the Witness.

Repeat distinctly what you said yesterday about the manner you were ordered by Captain Jervis to record the expenditure of wines from the cellar?—Captain Jervis ordered that the wine expended day by day should be written down by the clerk or writer attached to his office, and that the wine accounts so written should be shown daily to Captain Jervis, at ten o'clock, for his signature. Captain Jervis used to come about ten o'clock to the office, when he looked at the accounts.

The first time that you sent wine to Mahasoo, how much did you send?—As much as was ordered by Captain Jervis was sent, and that quantity was put down in the memorandum.

How much did Captain Jervis order you to send the first time?—Captain Jervis gave me no orders

orders to write down, "Whatever may be used, have it written down by the writer and show it to me, and I will sign it."

Although you received no order to write down what was sent, did you keep any memorandum for your own information?—Yes, sometimes: for my own information, I sometimes wrote on the wall and sometimes on a paper memorandum.

Where is the paper on which you wrote your memoranda?—They were in the Chupprassie's house; from the Chupprassie's house they were sent to the Persian interpreter's office; the Persian interpreter sent for me and showed them to me; whatever was in them he told me, but what was here and there, he could not tell me.

Do you recognise this paper, and what is it?—This paper is for my recollection; the wine expenditure account; part of the expenditure is in it, part is not.

Have you written down on that paper what wine you sent to Mahasoo?—Yes; in this paper some part is written, and some is not written.

Show where you have written what went to Mahasoo?—(*The witness shows the page which contains the entry.*)

Will you read the page in which the wine sent to Mahasoo is written down?—26th. (Month unknown; the month is in the original memorandum.)

Beer - - - - -	6 dozens.
Soda-water - - -	6 dozens.
Whisky - - - -	2 bottles.
Brandy - - - -	2 bottles.
Sherry - - - - -	17 bottles.
Claret (pints) - -	16 bottles.
Sauterne - - - -	3 bottles.
Maraschino - - -	6 bottles.

Nuna Khan.

13 July 1866.

On another date, not mentioned:

Champagne - - -	4 dozens.
Champagne in pints	18 bottles.

33 dozens sent to Mahasoo of sorts. But of this expenditure part is shown here, part not.

By *Prosecutor.*] Will the Court allow the interpreter to compare the paper with the witness's reading of it.

The interpreter has done so, and finds it to tally with his written statement.

Who took this wine to Mahasoo?—coolies took it.

Who got the coolies to take it?—The Khansamah sent for the coolies to take it to Mahasoo.

Do you know who went in charge of the coolies to Mahasoo?—A Madras butler, servant of Captain Jervis, went with the coolies; also his Excellency's Khidmutgars; but the wine was in charge of the butler, by order of Captain Jervis.

What were the Khidmutgars' names?—Baboo Khan and Nubbie Bux, Khidmutgars; and Meer Khan, butler to his Excellency; a cook, name unknown, and Bufater, Mussalchee.

The Prisoner declines cross-examining.

[This Witness withdraws.

Fifth Witness for Prosecution, Hussun Khan.

HUSSUN KHAN (Mussulman), is called into Court, makes the prescribed solemn affirmation, and is Examined through Interpreter.—Examination in Chief.

Hussun Khan.

BETWEEN what dates were you Khansamah to the Commander in Chief?—From April 1865 to 19th February 1866; but I was only paid by Captain Jervis to the 10th February.

When Captain Jervis was at Mahasoo, did you supply his table?—Yes, I did so.

Did you send oilman's stores?—Captain Jervis stood in the store-room, and sauce, vinegar, fish, sugar-candy, and tea and coffee, was made over to his butler, with orders to take them to Mahasoo, whither they were sent; and at the same time Captain Jervis gave orders to his Excellency's butler to take up table linen, knives, forks, crockery, and glass; and he went with them.

Did you send any preserved provisions in tins?—Yes, lobsters, oysters, salmon, truffles, asparagus, bacon in tins, herrings *à la* sardines, carrots, dry fruit in tins, and other fruit in bottles; ham and English tongue came from the merchant, but whether in his Excellency's name or Captain Jervis', I do not know.

Did these stores you sent out belong to the Commander in Chief or Captain Jervis?—When I entered the service, Captain Christie was on the committee (had charge of the household). The stores came from Bombay; Captain Christie had the cases unpacked, and had the stores arranged in the store-room; and there was also the wines. Captain Christie gave me the keys, and told me to look after everything. Whatever was issued daily, was entered in a book, which book was inspected by Captain Christie. On 1st September 1865 Captain Jervis came on the committee, *i. e.* received charge of the household. Captain Jervis went over the store accounts, and in person came to the store-room. I said that the duty of looking after everything was too much for me, and that the wine should be separated from the stores; then the wines were made over to the Abdar. The place where the oilman's stores was kept was converted by Captain Jervis into his orderly-room. This room was kept open from about nine o'clock until four o'clock in the afternoon, when it was locked.

The question is repeated.

The stores sent to Mahasoo belonged to the Commander in Chief; Captain Jervis had none in the store-room.

Did you make a memorandum of the stores you sent out to Mahasoo?—No, I made none, that not being my duty to do so.

How many times did you send out stores to Mahasoo?—The first time the things were sent in large quantities; then, three or four times, whatever ran out was sent up.

Did you get coolies to take the stores to Mahasoo, if so, how many?—Captain Jervis sent for coolies (ladakies) from Mahasoo. Sometimes I sent for coolies; at times five, and up to 16, as required.

Hussun Khan.

13 July 1866.

You have stated that you supplied Captain Jervis's table at Mahasoo; did you keep an account of this expenditure?—The accounts of the expenditure at Mahasoo, originals and copies, including memoranda, are in Captain Jervis' possession; and if Captain Jervis is called on, he can produce them.

By *Prisoner.*] I shall be happy to show the fair copies of the accounts to the Court; they are made out in English; the original, in the native character, should be in the possession of the witness, or his munshi.

Have you in your possession any memorandum of the amount of the bill on account of the Mahasoo expenditure?—Yes, I have the totals of four or five days' expenditure of the meals served at Mahasoo. I have no paper or account showing the entire expenditure, because two "sundry" books (Simla), one dinner-book (Simla) containing the dinner accounts of his Excellency, which Captain Jervis took to look at, and retained. Two "sundry" books, containing cash expenditure, on one page of which his Excellency's expenditure was entered; on the other, or succeeding page, Captain Jervis', and so on. There are also in Captain Jervis' possession six or seven bills filed. They were taken from me on the night of the 14th November 1865, a little after nine o'clock. Captain Jervis locked them up, paid me some money, and said he would settle the balance of accounts in Calcutta. Captain Jervis on that night gave me a cheque for 1,292 rupees on Calcutta; and another cheque for 400 rupees on the Simla Bank. Captain Jervis said he had no more money, as his Excellency had not paid the accounts, and that what he (Captain Jervis) had paid was from his own private funds, with the exception of the 400 rupees.

The Court rises temporarily for refreshment.

What is the amount of such items of Mahasoo expenditure as you have a note of?—

		Rs.	a.	p.
30 September	- - -	74	14	11
4 October	- - -	47	13	–
5 October	- - -	47	13	–
7 „	- - -	19	–	6
8 „	- - -	20	6	4
9 „	- - -	35	5	2
11 „	- - -	41	3	4
19 „	- - -	21	5	8

When were you paid for what you supplied to Captain Jervis at Mahasoo?—At Calcutta, on or about the 6th January.

What was the amount of the bill you presented to him on this account?—I cannot answer the question from memory.

What was the amount of the bill in which the Mahasoo expenditure was included?—Captain Jervis paid me the balance in full at Calcutta, being Simla accounts in which the Mahasoo accounts were included; 880 rupees. At first, in August, there was an item of 196 rupees, and this amount is included in the sum of 700 rupees, or thereabouts, which was Captain Jervis' private account, and included the Mahasoo expenditure. Out of the sum of 2,572 rupees, 700 rupees is on Captain Jervis' private account. This 2,572 rupees is the total of the two drafts paid at Simla, and the 880 rupees paid in Calcutta.

Was the amount of about 700 rupees, which was the sum due to you in Calcutta on Captain Jervis' private account, presented to him in a separate bill?—I showed the separate bill to Captain Jervis.

Did Captain Jervis pay this separate bill of about 700 rupees when you showed it to him?—When I showed the bill to Captain Jervis in Calcutta, he ordered his Madrasee servant to take down the numbers of all the vouchers, also the accounts from the Commander in Chief's dinner book and his Excellency's miscellaneous accounts. Captain Jervis' private accounts to be included, and then a grand total to be made. This was done when the balance of 880 rupees was struck and paid me.

The Court rises at Four o'clock P.M., and adjourns until Eleven o'clock to-morrow forenoon.

Fourteenth Day.—Saturday, 14th July 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon.

President, Members, Judge Advocate and Interpreter, all present.

The Prisoner and Prosecutor appear in Court.

Hussun Khan is called into Court, and his Examination in Chief resumed on his former solemn affirmation.

14 July 1866.

You said you got coolies to carry stores and wines to Mahasoo; how were these coolies charged?—These coolies were charged in the book of "Sundries" in Captain Jervis' possession; it was written by Mr. Shelverton, the writer in employ.

Were all items entered in the book of "Sundries," charged in the Commander in Chief's account?—At the end all items entered in the sundry book were charged and settled in Calcutta in January, when the 880 rupees were paid me.

Did all the "Sundry" books you have mentioned contain "entries" chargeable to the Commander in Chief?—These "Sundry" books contained the accounts of his Excellency and of Captain Jervis.

Question by *Court.*] You stated you kept his Excellency's

Excellency's accounts on one page and Captain Jervis' on the other in the "Sundry" books; on which page were these coolies entered?—The two accounts, Captain Jervis' and the Commander in Chief's, were kept on separate pages, and in one book, and from recollection I cannot tell. The grand total was made in Calcutta, and in that total the charge for coolies and everything was entered.

Examination in Chief resumed.

When you were paid the balance of the Commander in Chief's account at Calcutta, did you give one receipt for the whole, or did you give a separate receipt for that portion which was due to you by Captain Jervis on his own account?—I neither gave a receipt nor received a receipt.

Did you ever give Captain Jervis receipts for the sums you received from him at any time?—I always gave receipts in the books except for the 880 rupees, the account of which were on separate sheets, and for which no receipt was given.

When you received the balance of 880 rupees, were you paid in cash or by cheque?—He gave me a cheque, which was duly cashed.

Have you ever supplied any other officers of the Commander in Chief's staff, besides Captain Jervis, with tiffins for picnics or other purposes?—Once Captain Christie ordered a small tiffin which cost between five and six rupees, which sum he paid; there were no English stores. Besides this, no member of the chief's staff was ever supplied by me.

You say that 1,692 rupees were paid to you on the 14th November; on what account was this payment, and for what months?—Some for September, some for October, and some for August; cash expenditure by vouchers of his Excellency's and Captain Jervis'. Some for the lighting and sundry expenses of a large entertainment (supper) given by the Commander in Chief in the month of September; also sundry items on account of the building of the new house; and the Bunneah's accounts, and 103 rupees for a new cook sent for by Captain Christie from Murree; also 612 rupees, pay of the servants.

The Court is closed to consider the following application from the Prosecutor.

"The witness has stated that when he was paid 1,692 rupees on the 14th of November, he was told by Captain Jervis that 400 rupees only of that was the Commander in Chief's money; that the Commander in Chief had not then paid him (the prisoner). Before closing the examination in chief of the witness, I should wish the Court to examine the prisoner's closed cash account for November, and to note on their proceedings that the balance struck on the 30th of that month shows a credit in favour of the Commander in Chief.

"I should also wish it noted that the November payments, as shown in the prisoner's cash account for that month, do not include any such sum as 1,692 rupees as paid to the Khansamah, or anything approaching it.

"The Court note that on the 30th November a balance appeared in favour of the Commander in Chief of *Rs.* 201. 3. 6.

Hussun Khan.

14 July 1866.

"That the payments to Hussun Khan during November, are for

	Rs.	*a.*	*p.*
Table Expenses in October	301	9	11
Sundries - - -	30	9	9
TOTAL - - - *Rs.*	332	3	8

and if the servants were paid through him also, *Rs.* 425 9*a.* 2*p.* The oil bill for September is entered *Rs.* 158 2*a.* 0*p.*, and for October, 71 rupees. Table expenses for September appear as paid in the month of October:

	Rs.	*a.*	*p.*
"Table expenses - -	1,200	15	6
Sundries - -	428	14	10
TOTAL - - *Rs.*	1,629	14	4

"The Court also take this opportunity of reminding the prisoner of his offer, as recorded in the proceedings of yesterday, to produce the Khansamah's account of the Mahasoo expenditure."

The Court is opened, and the above read out.

By *Prisoner.*] I would sooner withhold the accounts until the defence; I do not wish to assist the prosecution; that is my only object in withholding the papers.

The Prisoner declines cross-examining this Witness.

The Court rises temporarily for refreshment.

Examination by Court.

In the tiffin you state you supplied to Captain Christie, were there any English stores, and if so, do you know from whence they were supplied?—There were no English stores, only the things I have stated.

How came you to supply the money for the payment of the servants amounting to over 600 rupees; had you ever done this before?—Inquire of Captain Harbord and Captain Christie; when ready money was required, they used to send to me for it and I paid it; all the servants are more or less in my debt, and are so now. Captain Jervis said, "You pay the servants two months' wages each, and I will repay you." I had cash of my own; on paying them, I found that I was short of cash, and sent for Towhurrie and Tuttoorie, Bunneahs of Chota Simla, and borrowed between 150 and 200 rupees from them and paid the servants; before this I did not pay the servants.

You say you usually gave receipts for money received; why did you not give a receipt to Captain Jervis for the 880 rupees?—Captain Jervis gave me a cheque, and said, "Go to the bank and get the money;" at that time I was short of cash, and pawned my ring to raise money; I was then owed 2,000 rupees on account of expenditure incurred for his Excellency's expenses.

[The Witness withdraws.

Sixth Witness for Prosecution.

BABOO KHAN (Mussulman), is called into Court: makes the prescribed solemn affirmation, and is Examined in Chief through the Interpreter.

Baboo Khan.

14 July 1866.

How long have you been in the Commander in Chief's service, and in what capacity?—I am under the butler; second butler; I entered the Commander in Chief's service in September 1865, and am in it now.

When Captain Jervis was at Mahasoo last year, did you go out there, and if so, what business had you there?—I went there in charge of the table silver, &c.

Who else went out with you; did other things go besides silver; how long did you stay at Mahasoo?—I stayed at Mahasoo the first time for three days; the men who went with me were Golab, mate; Buffatee, Mussalchee; Nubbee Bux, Khidmutgar; Golab, Abdur, mate, was with the wine, and the table linen was with me.

The Prisoner declines cross-examining.

[The Witness withdraws.

Seventh Witness for Prosecution.

BUKHTOO, Mate (Hindoo), in service of the Commander in Chief, is called into Court; makes the prescribed solemn affirmation, and is Examined in Chief through the Interpreter.

Bukhtoo.

How long have you been in the Commander in Chief's service, and in what capacity?—I am mate of Jaumpannies, and have been in his service since April last year, and am so now.

When Captain Jervis was at Mahasoo, were you employed in taking things there, if so, who helped you to take the things out, and how often did you go?—When Captain Jervis was at Mahasoo, I did not go; when his Excellency was there, I did go in charge of things.

The Witness declines cross-examining.

[The Witness withdraws.

The Court rises at seven minutes before Four o'clock, P.M., and adjourns until Eleven o'clock in the forenoon of Tuesday, the 17th July.

FIFTEENTH DAY.—Tuesday, 17th July 1866.

THE Court assembles at the same place, at 11 o'clock in the forenoon.
President, Members, Judge Advocate, and Interpreter are all present.
The Prisoner and Prosecutor appear in Court.

17 July 1866.

By *Prisoner.*] MAY I now see the papers connected with the examination of the native witnesses and others who were examined by his Excellency on the 14th May, with the papers laid before the court of inquiry; the Court ordered this before?

The Judge Advocate reads to the Court their decision, about the commencement of sixth day, that after native and other witnesses had been examined before this Court, the prisoner should have access to their statements made before the Commander in Chief and the court of inquiry.

By *Court.*] The former statements are shown to the prisoner.

By *Prisoner.*] May I now be allowed to see the papers connected with the examination of the witnesses, on the 14th May, by his Excellency, as well as all the papers connected with the court of inquiry, the charges there preferred against me, and the finding of the Court?

It will be my chief justification, in regard to the alleged contumacies, to show the whole of these proceedings.

By *Judge Advocate.*] The Court's attention is requested to Bengal Military Regulation, sect. 22, paragraph 10, by which permission is given for the production of proceedings of court of inquiry only as far as statements recorded therein become a point at issue before the Court.

By *Prisoner.*] I submit that the statements recorded before the court of inquiry are distinctly at issue before the Court, as I can show, if allowed.

The Court will see how the proceedings of the court of inquiry do form an issue in this case, when I state that the cause of my leaving the court, which has been alleged against me, and my neglecting to produce papers, as laid in the second charge, all arose and are justified by the character of the charges, as well as the other proceedings which took place at that court. As to the authority quoted by the Deputy Judge Advocate General, it has no connection with officers of Her Majesty's army. The last book for the guidance of courts-martial is D'Aguildar, and no other; and no such restriction or rule is to be found there.

In the absence, therefore, of all binding rule on the subject, I submit to the Court that the general principles of justice, equity, and good conscience should regulate their proceedings; and I would ask why, if all was conducted with propriety and fairness, any objection is made to the production of the proceedings of the court of inquiry?

I again respectfully repeat that the production of these papers is important in the last degree to me.

By *Judge Advocate.*] To understand the Bengal Military Regulations properly on this subject, the Court should remember that the proceedings of the court of inquiry are privileged communications, and that it is by a special exception that any communication made before them can be made known to any other person than the authority convening the Court. The Bengal Military

Military Regulations contain such exception, and it cannot be extended further.

By *Prisoner.*] I would wish to add that the restrictions quoted by the Deputy Judge Advocate General are not found in any of the standard works on military law, and the absence of such restrictions is strong negative evidence on the point, as showing that they are not contemplated.

The Court is closed.

The Judge Advocate states that he understands the permission already given to the prisoner would have to be acted on as follows:—

The prisoner has access to the former statements of the witnesses; he may then cross-examine any of these witnesses as to their former statements, if he thinks there is variance; but that such variance should only be alleged in the presence of the witnesses accused of variance, who may have an opportunity of reconciling the alleged discrepancies. This remark is independent of the further application now made by the prisoner. *Bukhtoo.* 17 July 1866.

The Court decide that at the present stage of the proceedings only such portions of the Court of Inquiry should be placed at the prisoner's disposal as may be necessary for the purpose of comparing the evidence of witnesses before this Court with their statements previously given before the Court of Inquiry and the Commander in Chief.

The Court is opened, and the above decision read.

Eighth Witness for the Prosecution.

Loll Sing (Hindoo) is called into Court, makes the prescribed solemn affirmation, and is Examined in chief through the Interpreter.

In whose service are you, and in what capacity?—I am servant of Lord W. Hay; I am chowkeydar of his house at Mahasoo.

Were you in charge of Lord W. Hay's house at Mahasoo when Captain Jervis was there last year, and have you been in charge since that time?—Yes; I was there, and have been from that time to the present.

When Captain Jervis left Mahasoo last year, did his property remain there?—Yes; it was left at the house.

Amongst other things, was there any wine, and if so, about how much?—Yes; there was wine and beer, about three dozens, more or less.

When was this wine taken away?—In May; by the 11th May the wine and all Captain Jervis's property had been removed. *Loll Sing.*

Do you remember when the property commenced to be removed?—The whole of the property was removed between the 30th April and the 11th May.

Did you ascertain from Captain Jervis that he had received all his property, and when did you ask him?—Yes; I asked him on the 12th May; Captain Jervis said he had received everything.

Where was Captain Jervis at this time?—Captain Jervis was at Major Innes's house.

By *Prisoner.*] May I ask to what charge this evidence refers?

By *Prosecutor.*] To the first instance of the first charge.

The prisoner declines cross-examining.

[The Witness withdraws.

Ninth Witness for the Prosecution.

Ruheem-ood-deen (Mussulman) is called into Court, makes the prescribed solemn affirmation, and is Examined in chief through the Interpreter.

How long have you been in the Commander in Chief's service, and in what capacity?—In the stables, from the 20th January; I am duffadar in charge, and am still in his Excellency's service.

Were you at Calcutta and Barrackpore, in charge of the Commander in Chief's horses, last winter?—The 20th January Captain Jervis sent for me; I was at Calcutta and at Barrackpore in charge of the horses.

When in Calcutta, did you receive any heel-ropes for the use of the horses under your charge; if so, who did you get them from, and what did you do with them?—I received four (single) heel-ropes from Captain Jervis on the 11th March. On the 12th March, two horses of the Commander in Chief, with two heel-ropes, were started for Simla, and two heel-ropes remained with me. On the 20th March these two were sent with two horses of the Commander in Chief to Lucknow. On the 24th March I received six more heel-ropes; three horses of Captain Jervis, Captain Jervis, I, and Abbey (the butler) started by rail from the Howrah station for Delhi, which we reached on the 27th, and the six heel-ropes were put on the horses.

When did you arrive at Simla?—On the 13th April. *Ruheem-ood-deen.*

Did you give any of the horses any more heel-ropes after arrival at Simla?—Yes; Captain Jervis gave me another, which I made over to his syce for his horse.

Were you present when a box containing horse clothing which had arrived from Calcutta was opened at Simla; if so, state what occurred on that occasion?—I was present when the box was opened; I took out eight sets of horse clothing, which were made over to me by Major Gordon, who said, "Keep horse clothing (six sets) belonging to his Excellency separate, and as to the two sets belonging to Captain Jervis, ask for his orders." Captain Jervis ordered them to be made over to his servant, to be kept in his room.

By *Prisoner.*] I am quite willing to allow the Prosecutor to record my admission that the things enumerated in the third instance of the first charge were taken by me out of his Excellency's stores; it will perhaps save two days' labour of the court.

The Prisoner declines cross-examining.

The Witness withdraws.

The Court rises temporarily for refreshment.

Tenth Witness for Prosecution.

Major T. E. GORDON, Persian Interpreter to the Commander in Chief, is called; duly Sworn and Examined in chief.

Major *T. E. Gordon.*

17 July 1866.

WHEN did you take over separate charge of the Commander in Chief's stable from Captain Jervis?—On the 14th April last.

Did you open a box of horse clothing received from Calcutta, on or about that date; if so, what was done with the contents?—I opened a box of horse clothing between the 17th and 20th of that month, as far as I can recollect; there were eight sets of horse clothing in it; the duffadar in charge of the stables was present then, and took over two sets of the lighter clothing, saying that they belonged to Captain Jervis; the other six sets, he said, belonged to the Commander in Chief; he took the two sets away to Captain Jervis's quarters.

Had you previous to this circumstance any conversation with Captain Jervis relating to the transfer of the stable; if so, will you relate any that had reference to outstanding bills?—On taking overcharge of the stable, Captain Jervis mentioned to me that there was a large bill to Messrs. Monteith and Company for stable equipments. I said I thought he should settle that, and that I would be responsible for any bills that I incurred. Captain Jervis objected, and said that he would write to Monteith & Company, and tell them to correspond with me on the subject. Captain Jervis also mentioned a sum of 1,000 rupees due for a horse that had been purchased in Bombay.

When Captain Jervis told you that there was a large bill due to Monteith, did he inform you that any of the articles which would be included in that bill had been appropriated by him to his own use?—No.

Had he informed you at any previous date, or has he done so subsequently?—Before the committee of audit Captain Jervis said to me that he would like to see the duffadar regarding accounts of grain and grass for the horses, as Captain Christie's, Captain Harbord's, the Commander in Chief's, and his own were mixed up; I merely replied that I thought the duffadar had no such accounts. That is the only conversation that I have had with Captain Jervis regarding the stable accounts excepting what I mentioned before.

When you were told by Captain Jervis before the Committee of Audit that the grain accounts had been mixed up, did you inquire as to the circumstance alleged?—No.

When you were told by Captain Jervis that a large bill was due to Messrs. Monteith & Company, did you write for it; is this the correspondence?—I mentioned the fact to the Commander in Chief a few days after taking charge, and he told me to write to Monteith for the bill; I did not carry out his instructions at once, as I should have done, but wrote on the 2nd of May for the bill. This is the bill that I received with this letter of 9th May.

The letter and bill are read, marked A. W., and A. W. 2.

Witness.] I kept no copy of my letter, but I simply asked for the bill. On the 14th of May I wrote to Messrs. Monteith & Company with reference to the bill, to the effect that the things mentioned therein could not be accounted for in the Commander in Chief's stable, and that, as possibly some of them might have been got for some member of the staff, and not for his Excellency, I requested that he would send the vouchers on which these things had been obtained. I kept no copy of that letter. I received a short reply, saying that he would send what was required immediately. I have not this letter, but it is referred to in a subsequent letter; I tore it up. I have looked for this, but cannot find it; I don't know whether I tore it up or threw it away; I looked upon it as unimportant. A few days afterwards I received this letter with the account of the vouchers.

This letter and account are read, marked A. X., and A. X. 2., and appended.

Witness.] I have another letter addressed to Major Flood, also from Monteith & Company.

This is marked A. Y. (read and appended).

By Prisoner.] Will the court require the telegrams referred to to be read?

By *Prosecutor.*] I have only the telegram received; perhaps Major Gordon can state contents of messages sent?—The first message sent was an inquiry whether Captain Jervis had a private account with Messrs. Monteith & Company for articles supplied to him last cold season in Calcutta; as an immediate reply was not received to it by telegram, it was supposed that this might have been from the reply not being directed to be so sent. The second was merely to reply to the first by telegram. I state this to the best of my recollection. This is the reply that was received by the military secretary and handed over to me.

The reply is read, marked A. Z., and appended, to the effect that Captain Jervis had a private account.

By *Prosecutor.*] Will you examine these papers, state what they are, by whom they are signed, and if they correspond to the articles mentioned in Monteith's bill and list of vouchers?—

By *Prisoner.*] I fully admit the whole of this; I have already fully admitted that the articles were his Excellency's, and that I took them from his stores for my use; I as freely admit that I ordered them; so that evidence on these points is superfluous.

By *Prosecutor.*] You have been directed by the Commander in Chief to produce a correspondence between yourself and Mackenzie, Lyall, & Company; is this it?—Yes; I wrote for their account; the first is the reply to my letter, of which I have no copy; it was merely a request for the account. I then wrote a second time for a detail of the first three items, which were merely amounts of previous bills; of this I have no copy; the second letter is in reply to that. These letters and bills are read, marked B. A., B. A. 1, and B. A. 2, and appended.

Were

Were you present at Mackenzie, Lyall, & Company's, when any of the things mentioned in this bill were bought?—Yes, I was. When the Japanese articles were purchased, on 17th January, I happen to know I was present on that date, from seeing the articles specified here.

What occurred on that occasion?—The Commander-in-Chief bought these things, as far as I can recollect. I gather so from their being charged to him, as well as knowing several of the articles, and seeing them when purchased. Captains Christie and Jervis were present then. Captain Christie made purchases then, and I saw him tell the man to charge them to him.

Did Captains Jervis and Harbord buy anything?—Captain Harbord was not present on that occasion. I cannot distinctly say whether Captain Jervis bought anything or not.

Did you find these books, Nos. 1, 4, 5, and 6, and will you state under what circumstances?—There is a tent pitched in the compound of the Commander-in-Chief's present residence. I kept the saddlery and stable equipments in it, and in opening a box, in which a couple of old leading reins were thrown, I saw a number of old papers lying at the bottom of the box. On examining them I found these and a bundle of vouchers belonging to one of the books, I believe.

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When was this?—I can't well recollect. I recollect that it was after the court martial commenced its sitting, and it was a Sunday evening.

Did you on this or on any other occasion find any other books relating to his Excellency's household?—I found stable books. Those are the only books I found. The vouchers are lying in the chest still. I did not take them out. I also recollect visiting books, and there are two old books which I did not examine.

By *Prisoner.*] May I ask to what charge this evidence refers?

By *Prosecutor.*] That question refers to the first charge

By *Prisoner.*] To what instance?

By *Prosecutor.*] That last question, I see, refers to the second charge.

The Court rises at 4 o'clock p.m., and adjourns until 11 o'clock to-morrow forenoon.

Sixteenth Day.—*Wednesday 18th July* 1866.

The Court re-assembles at the same place at 11 o'clock in the forenoon.
President, Members, Judge Advocate, and Interpreter are all present.
The Prisoner and Prosecutor appear in Court.

Major T. E. Gordon is called into Court, and his Examination in chief resumed on his former oath.

You say that you found some household books in a box in a tent; will you state precisely to what period they referred?—They were Bombay books and Bombay accounts. With reference to finding them, I stated yesterday that I found them after the Court commenced proceedings, and on a Sunday evening. I find it was on the Sunday evening immediately preceding the sitting of the Court.

Have any of the articles of horse clothing and stable gear, the absence of which you could not account for when you took over the stable, and which the prisoner has now acknowledged to have been appropriated by him to his own use, been returned by him subsequently to your receiving charge?—No.

Is the horse clothing now in use with his Excellency's horses, and which was ordered from Monteith by the prisoner, marked with his Excellency's initials; has it any distinguishing mark?—No distinguishing mark or initials; it is all of the same pattern.

By *Prisoner.*] If the prosecutor and deputy judge advocate persist in objecting to the production of the papers and finding of the Court of Inquiry, may I request that the matter be referred to the Commander-in-Chief, for his Excellency's official decision, unless the Court itself decides this point in my favour.

Section 933, page 350, of "Simmons on Courts Martial," expressly provides for such a reference.

Second address by *Prisoner.*] If I am not mistaken, his Excellency stated that when Major Gordon gave his evidence, certain other papers would be produced, viz., certain papers connected with the Court of Inquiry, of which he is specially cognisant.

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By *Judge Advocate.*] I am not aware of there being any further papers.

By *Prisoner.*] As it is possible I may have been mistaken in regard to the statement referred to, and as the papers I wish to be produced are included in those to which my previous note refers, I do not wish to press the point any further.

By *Prosecutor.*] As the entire proceedings of the Court of Inquiry do not form part of the case for the prosecution, and as the permission of the Commander in Chief has already been given to free access on the part of the prisoner to all minutes of evidence recorded in the proceedings or attached thereto, so far as they relate to the charges before this Court, and the evidence given before this Court, I would submit that the question of the proceedings should be postponed until the defence. If it is then shown to the satisfaction of the Court that the entire proceedings of the Court of Inquiry are essentially necessary to the defence, the question of their production might be discussed, but I am instructed to state that the proceedings of the Court of Inquiry are considered confidential, and that in placing them in the hands of the Judge Advocate it was not intended that they should be available for record by this Court, without a special permission to that effect.

By *Prisoner.*] I still beg the reference

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may be made, so essential towards my cross-examination.

By *Prisoner.*] I wish that the following remark by the Judge Advocate may be entered:

The fact of your having already taken up the "time of the Court for half an hour is something to note in its proceedings."

My object in asking the Court to note down the Judge Advocate's remark is, because I wish to show the apparently unfriendly feeling he has shown towards me throughout, in regard to which I shall, probably, make a reference to the Court itself hereafter.

The court is closed.

The Court decide to communicate the Prisoner's application to the Adjutant General for the orders of the Commander-in-Chief, and a letter to the Adjutant General is despatched accordingly.

On the other reference the Judge Advocate states as follows.

My remark is not correctly quoted; I proposed that as the Prisoner's second application had come to nothing, it should be withdrawn; he then said he preferred its remaining on record, and I said, "Well, it stood for half an hour's work."

The Court direct the following entry.

With reference to the Prisoner's remark on the animus displayed by the Judge Advocate, the Court wish to record that they consider the Judge Advocate has shown no unfriendly feeling or animus whatever against the Prisoner; and that the Prisoner's remarks on the subject are uncalled for and reprehensible.

The court is opened, and the above decisions are read.

The Prisoner requests to defer his cross-examination until a reply is received from the Adjutant General.

The Court decide to take the examination of another witness in the meantime.

Eleventh Witness for Prosecution.

EDWARD ABBEY, Butler to the Commander-in-Chief, is called; duly Sworn, and Examined in chief.

E. Abbey.

WHEN did you come from Calcutta to Simla, and with whom?—I left Calcutta on the morning of the 25th of March last, with Captain Jervis.

By *Prisoner.*] May I ask to have the examination of this witness before the Commander-in-Chief, and also before the Court of Inquiry.

By *Judge Advocate.*] These are the papers containing this witness's examination before the Commander-in-Chief. He was not examined before the Court of Inquiry on subjects connected with the charges before this court martial.

What is the book now handed to you; was it in your charge?—Bazaar expense book, and was in my charge

Is it one of the Commander in Chief's house books?—Yes.

For the days you have stated you were on the road from Calcutta; are there any entries in that book?—Yes; 25th, 26th, 27th, 28th, and 29th March.

How do you account for entries being made in the Bazaar Expense Book for those days; was a table provided for the Commander in Chief?—No; Captain Jervis's travelling expenses, dâk bungalow hire, and in one or two instances my own are included.

What are the entries in that book on account of travelling expenses, and is there any entry to show their character?—

On the 25th		2	*r.*	8	*a.*
On	„ 26 „	6	„	14	„
On	„ 27 „	13	„	10	„
On	„ 28 „	3	„	8	„
On	„ 29 „	20	„	12	„

The Court note that there are no items entered, only the total amount of each day.

How do you account for road expenses being entered under the head of bazaar expenses; why did you thus enter them?—By order of Captain Jervis.

The Prisoner requests that the answer of the witness to the question before the last, may be recorded thus:—

"But what is their character?"—"What do you mean sir, please?"

Has Captain Jervis seen, and approved of these entries?—Captain Jervis has seen, and approved of them, and signed them in proof of their accuracy.

When Captain Jervis signed his initials across that page, was he aware that those entries included his own travelling expenses?—He was.

You have stated the entries included your own expenses; will you detail, as far as you can recollect, on what account the expenditure, as shown in each entry, was incurred?—At Kurnaul, on the 26th, 8 annas bungalow hire. On the 27th, at Delhi—[On it being remarked that he was going back, the witness says,]—I beg pardon, Kurnaul was on the 28th. On the 25th, Captain's dinner—on the line, I don't know the name of the place—2 rupees; the 8 annas I cannot account for. On the 26th, bread and butter, 12 annas; hot water, 2 annas; milk, &c., 4 annas. Captain's breakfast was 1 rupee 8 annas; there was some fruit I bought by order of the Captain, at Benares, 8 annas. At Allahabad, there was 2 rupees, or 2 rupees 8 annas, I cannot recollect which, I paid to the station-master for the Captain's dinner; there was also some coffee, which cost 12 annas. That is all I can remember of the 26th. On the 27th, one pint of beer, 12 annas; sodawater for myself, 4 annas.

By *Judge Advocate.*] What is the paper you are reading from?—The Delhi bill.

Is it the original bill you received there?—No, it is not; it is one which I wrote for afterwards.

Answer to Prosecutor's question continued—

Board and lodging, 5 rupees; pint of beer, 12 annas; room No. 4, occupied by your servant, (that is myself), 1 rupee; tea sent to him, 1 rupee

rupee (that is myself). There were two other items on the 27th, but I destroyed the bill and the other two papers, after the captain had signed in the bazaar book, but I wrote subsequently for a copy of the bill. On the 28th, at Kurnaul, I can only tell you one or two items out of the 3 rupees 8 annas. One rupee goes for dâk bungalow hire, 8 annas for biscuits; I cannot tell you the other items. On the 29th, there was a bill supplied by Mrs. Bain, at Kalka, that I destroyed; I have written for another, but could not get it. There were refreshments at Kukerhuttie and Syrie; the items there I have written for, but could not get.

How did you live on the road?—I brought refreshments with me, by order of Captain Jervis.

The Court rises temporarily for refreshment.

When you entered the travelling expenses in the bazaar expense book, why did you not enter them as travelling expenses?—I asked Captain Jervis if I should enter them as travelling expenses, and show the items; he said "Never mind; enter them as bazaar expenses."

Are the several items you have enumerated totalled at the bottom, and what is the total?—The total of the bazaar expenses, from the 6th to the 29th inclusive, is *Rs.* 504. 12. 2.

Then the items on account of the travelling are included in that total of *Rs.* 504. 12. 2?—They are.

How were the expenses on the road defrayed?—By me, out of money advanced to me by Captain Jervis.

On what account advanced?—The Commander in Chief's house expenses.

Did you keep at this time a separate note of sums spent for Captain Jervis's private account?—I did; there are Captain Jervis's private accounts, or copies of them, and this letter is the original draft of a letter I wrote to Captain Jervis some time ago.

The paper showing accounts for March is received, marked B. B., read and appended.

Have you the account kept of sums expended for the Commander in Chief for March?—I have a copy of them; Captain Jervis has the original.

By *Prisoner.*] I would submit that this, being a copy, is no evidence. I respectfully submit, that no copies or drafts which constitute "secondary evidence" can be produced until the impossibility of obtaining the originals has been proved. I have no objection to anything true being produced, but this is an universal maxim, and it is impossible for the Court to know whether a copy or draft is correct or not.

By *Judge Advocate.*] Before the Court assembled on the 18th June, at the request of the prosecutor, I wrote to the prisoner, notifying to him to have in readiness in Court for production, in original if required, as documentary evidence, "All books, bills, receipts, memoranda, letters, vouchers, promissory notes, or other documents or papers in his possession, or under his power or authority, which were in any way connected with the subject-matter of the charges, and with the accounts of his Excellency the Commander in Chief, or any of his household or servants, present or former." The prisoner has the opportunity of producing the originals which the witness deposes to having delivered to him.

By *Prisoner.*] Before copies of particular documents can be required, or even looked at by any Court, whether civil or military, the impractibality of obtaining the originals must be proved to the satisfaction of the Court; this is one of the fundamental rules of evidence, and even when after proof of the impracticability of obtaining originals is proved, copies must be authenticated by undoubted evidence, and be shown to be beyond suspicion before they can be trusted. The attempt now made to produce copies, without any of the preliminary steps in regard to the originals being taken, is, I submit, opposed to the first principles of jurisprudence. The account now produced in copy is a private account between me and Abbey, and has nothing to do with the accounts of Sir W. Mansfield. I shall have no objection, however, to produce the original if the Court wish it, as I believe I have it. That the Court may not suppose that I am raising any vexatious objections, I would wish it to be understood, that I have from the first maintained, and still wish to maintain, that private accounts and memoranda between me and third parties are essentially private between me and them, and are totally distinct from accounts which I render to his Excellency; and that while his Excellency has a right to demand my accounts, he has not the right to demand such private memoranda or accounts as I keep with others for my own satisfaction, and from which I prepare and complete his Excellency's accounts.

The prisoner remarks that he does not wish to stay the proceedings; to-morrow he will produce the originals, and in the mean time these copies may be used, subject to correction on comparison with the originals.

The prosecutor requests that this matter may be decided by the Court.

The Court is closed.

The Judge Advocate observes, that the prisoner should have been applied to for the originals on the spot, before the copies were asked for; but copies having been taken throughout these proceedings with the prisoner's consent, and the prisoner having received a demand for papers as previously noted, this formality was neglected.

The Court decide to go on with the copies, subject to comparison with the originals if they can be produced.

The Court is opened and the above read.

The paper last handed in is read, marked B. C., and appended.

In which of these two accounts are Captain Jervis's private expenses on the road charged, namely, in the Commander in Chief's account or Captain Jervis's private account?—In the Commander in Chief's account.

Point out the item in which they are included?—Bazaar expenses from 6th to 31st March 1866, *Rs.* 504. 12. 2.

Did Captain Jervis carefully examine the books in

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in your charge, and the accounts you presented to him?—Always.

When you presented the two accounts you have handed in, the Commander in Chief's and Captain Jervis's private account, did Captain Jervis order you to make any deduction from the Commander in Chief's account on account of his travelling expenses, or did he accept the two accounts as correct?—He accepted the two accounts as correct.

Were they handed to him at the same time or on different occasions?—At the same time.

Subsequent to your and Captain Jervis's arrival from Calcutta, have any wines and stores been returned to the Commander in Chief's store-rooms by Captain Jervis?—None.

When you left Calcutta did you pack up the household books of the Commander in Chief?—I did.

Can you state when they arrived at Simla?—Some portion of them arrived with myself on the 30th March: there was the stock book, wine book, bazaar expense book, private sundries, stable book, furniture book; there was also some other books, one of them called "ledger," arrived some time afterwards by the country carts that came from Delhi. I cannot say the exact date, but I know they arrived before the 20th April, as Captain Jervis passed a remark at the time that the country carts had beaten the bullock train.

The Court rises at 4 o'clock p.m., and adjourns until 11 o'clock to-morrow forenoon.

Seventeenth Day.—Thursday, 19*th July* 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon.
President, Members, Judge Advocate, and Interpreter, are all present.
The Prisoner and Prosecutor appear in Court.
The President produces a letter from the Adjutant General, dated 18th July 1866, in reply to the Court's letter of yesterday, which is read, marked B.D., and appended.

E. Abbey is called into Court, and his Examination in chief resumed on his former Oath.

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You stated yesterday that it had been remarked that the country carts had beaten the Indian Carrying Company's carts; when did the latter arrive?—The last lot with the 131 cases arrived on the 22nd April.

The prisoner hands in the original of Appendix B.C., which is marked B.C. 2, and appended.

It is compared with Appendix B.C., and found to tally, except that copy B.C. is headed and backed "Cash account from 1st to 31st March 1866," and Appendix B.C. 2 is headed and backed "Petty cash account, &c." Appendix B.C. is, by order of the Court, made over to the prisoner.

By *Prisoner.*] Will the Court allow me to ask to which charge the last few questions refer.

By *Prosecutor.*] They refer to the prisoner's note of 24th April, saying that an account would be made up when the boxes with the accounts, &c. arrived, which note has already been recorded on the proceedings, and about which so much discussion has taken place.

By *Prisoner.*] I submit that there being no charge whatever in connection with the note of the 24th April, the evidence is wholly irrelevant. The isolated fact of my having written a note to Lady Mansfield on the 24th April, was introduced by his Excellency. It has nothing whatever to do with any one of the charges. I have therefore had no notice that any evidence on the point would be gone into, and the point itself is, as I have already submitted, entirely unconnected with any of the charges.

By *Prosecutor.*] I submit that this has the closest possible connection with the prisoner's general unwillingness to produce his accounts. The unwillingness is directly exemplified in the allegations contained in the 2nd and 3rd charges.

By *Prisoner.*] I submit that there is no charge connected with my unwillingness to produce my accounts, and the Court has checked me in putting questions in cross-examination on that very point which I was most anxious to explain by my questions. The "unwillingness" to produce my accounts is only mentioned in his Excellency's deposition not in the charge, which is "neglecting to obey an order."

The Court is closed.

The Court decide that examination on this point should be admitted as bearing materially on the charges before them.

The Court is opened, and the above decision read out.

Who unpacked the books, and when were they unpacked?—I unpacked the books on the night of their arrival in presence of Captain Jervis. They were at once carried away to his bungalow.

When did you join his Excellency at Calcutta?—I think it was on the 14th of February last.

Have you seen any of the late Khansamah's books; I mean books kept by him similar to those you are required to keep on account of the Commander in Chief?—On one occasion the Khansamah brought Captain Jervis his bazaar expense book when he came to get his money. Captain Jervis called my attention to the book, as it was not only bazaar expense book, but coolie hire and several other things included in it. It was a thin book with brown cover. I have not seen it since.

What was done with it on that occasion?—I cannot say whether Captain Jervis kept it, or whether it was taken away by the Khansamah.

Do you know if any of these books of the Khansamah

Khansamah are in possession of the establishment at the Commander in Chief's present residence?—No; none of them. I have never seen one.

Have you ever had in your charge any file of receipts of the Commander in Chief?—No.

Cross-examination by *Prisoner*.

Did you ever, when presenting his Excellency's bills for payment, at Simla, ask to have your own private bills receipted without payment?—Never.

Did you ever state to anybody that you would not be satisfied with your situation in his Excellency's service unless you were allowed to pay all his country bills?—Never.

Where were you employed before you joined the 101st Regiment?—My last situation was with Dr. Sweeny, in Cheltenham. As a soldier I had no situation until I was mess serjeant in the 101st. I was in two regiments before joining the 101st.

Will you state what regiments you were in, and for how long, and why you left them?—I was in the 29th Regiment. I enlisted in August 1852. I left them when the regiment was broken up in Shorgotty, in 1859 or 1860. That is when the volunteering took place before the regiment went home. I volunteered then to the 6th Bengal European Regiment, where I was at once made full corporal and lance serjeant, and put in the band. I served in them till the regiment was broken up, I then volunteered to the 101st Regiment, joined Colonel Salusbury's draft at Cawnpore, when soon after I was made pay serjeant of No. 4 section, which I kept until I arrived in Mooltan. I was then appointed pay serjeant of No. 8 company, and from there was removed to the officers' mess, which I kept till the day of my discharge. I may further add, that I have been a soldier close upon 14 years, and was never brought before an officer yet for any misconduct whatever, and I may then add, that as soon as it was known in Simla by Major Innes that I was leaving my regiment, I was immediately offered the management of the new club at Simla, which I refused. I then got the offer of the situation of butler to his Excellency the Commander in Chief, through, I believe, Captain Jervis. I accepted the situation, and joined his Excellency, as I believe, about the 14th of February last.

You say that you entered the "road expenses" in the "bazaar expense" book by Captain Jervis's order; did you at the time consider you were doing anything wrong or fraudulent in so doing?—No; I did not consider that I was doing anything wrong or fraudulent; but I certainly thought at the time that his Excellency was a very good man in defraying all the travelling expenses of the staff.

Was there any other book besides the bazaar expense book in which such items could have been entered at the time?—No; not unless they had been entered in the "private sundries" book.

Were all the bills on the road paid at the time they were presented?—All the bills on the road were paid at the time they were presented.

Were you ever authorised to destroy all the bills you say you have destroyed?—When I brought the bazaar book, and asked Captain Jervis where the accounts were to be entered, he told me to enter them in the bazaar expense book. I asked him at the time should I enter them in detail or not. He said no; the totals would do, and he would sign them, and in Captain Jervis's presence I tore up the vouchers.

Be so good as to answer the last question distinctly?—I cannot remember, but had Captain Jervis required them he would have stopped me when he saw me doing so at his table.

Did you ever tell his Excellency that you tore up the bills in my presence?—I cannot say for certain.

Did you at the time you paid the bills at Kukkurhuttie, Syrie, and Kalka, take receipted bills for the amount you paid?—At Kukkurhuttie I received no bill; at Syrie I made out a bill myself for the Khansamah; Mrs. Bain, at Kalka, gave a receipted bill for the amount.

You say you cannot remember whether you ever told his Excellency that you had destroyed the bills in my presence; can you now say whether you ever told him that they had been destroyed?—No; I cannot say whether I ever told him they had been destroyed. I beg your pardon, I did tell his Excellency that the bills were destroyed, and told him I would write for duplicates, which I did, and the Delhi bill was the only one I was able to get.

What bills did you refer to when you told his Excellency that they had been destroyed?—Mrs. Bain's; the Delhi bill; the bill at Syrie, and the several other pieces of paper which I kept myself, of Captain Jervis's expenditure on the road.

Did you give any information at all as to why and how they had been destroyed?—No; I cannot say that I did.

Were not all the bills which you paid vouchers for the payment?—In many instances, yes; in others, no; for instance, we'll say that at the first railway station the captain dined; I did not ask him to sign the bill, or in any other railway station on the road, as Captain Jervis knew perfectly well when he put his signature to those accounts, that best part of them was refreshments for himself; for, believe me, Captain Jervis is the wrong man to sign a thing he does not understand.

You stated in your examination before his Excellency, that you had written for the Kukkurhuttie hotel bill; you have here sworn there was no bill at Kukkurhuttie; can you explain this contradiction?—No contradiction whatever; I am not aware that I told his Excellency that I had written to Kukkurhuttie; but I told his Excellency that I had written to Syrie, to Mrs. Bain, and to Delhi; but if I had thought that I could have got a bill from Kukkurhuttie or from every other place on the road, I would have written for one.

You stated to his Excellency, in your examination, that the "bill had to come" from Mrs. Bain, but you did not mention a word about having destroyed it; can you explain this contradiction between that statement and your evidence to-day, in which you say you told his Excellency you had destroyed it?—The only thing I can say is that his Excellency must have misunderstood me entirely.

Did you write to Kukkurhuttie or not; be so good as to say distinctly?—No; I did not write to Kukkurhuttie.

What were the contents of your letter to Mrs. Bain, and what answer did you get?—Well, I cannot say the contents of my letter to Mrs. Bain; perhaps you would like to see the answer; the letter is here entered—

E. Abbey.

19 July 1866.

"Dear Sir, 29th.

"I DON'T remember supplying coolies, &c. to you. If I did, you have my bill to show; by you sending me down your bill which you receive from me I would supply you with fresh ones, as I gave the bill in full.

"Yours faithfully,
(signed) *C. Bain.*"

Addressed: E. Abbey, Esq., steward of the Commander in Chief, Simla. Bears post mark, "29 May, Kalka."

Have you no recollection even of the substance of your letter to Mrs. Bain?—The substance, most decidedly, was asking her for a duplicate bill, as the other was destroyed. I have not the slightest doubt that Mrs. Bain has my letter now, and she would be most happy to give it up.

I have shown the Court that you stated before his Excellency that Mrs. Bain's bill "was to come," and again, "when I get it;" without any mention or hint of your having ever received one. Can you now explain why you withheld the fact of your having received and destroyed it?

The Court is closed.

The Court decide to have read in connection with this question, the question and answer before the Commander in Chief, to which their attention has been drawn.

"On the 29th, the amount was *Rs.* 20. 12. Can you explain that sum?—I can explain a portion, but not the whole, as the bill has to come from Mrs. Bain; these were dâk drivers 2 rupees, one for me, and one for Captain Jervis; chowkeydais, 8 annas, for looking after the Commander in Chief's baggage. Mrs. Bain's bill, which includes Captain Jervis's refreshment, and perhaps mine, but until I get the bill, which I have written for, I cannot say. I have also written for the Kukkurhuttie hotel bill."

The Court is opened, and the question, with the above addition, is put:

Witness.] I cannot say; I cannot give any reason; at the time I may not have thought it necessary.

If you had written, as you state, to Mrs. Bain, for a duplicate bill, because you had destroyed the first, is it conceivable that Mrs. Bain should have written such an answer; be so good as to read the note to the Court once more?—I am sure I cannot answer for Mrs. Bain's reasons for writing such an answer.

You say you brought refreshments with you from Calcutta by my order; will you state what they consisted of?—Yes, I will; two fowls, two tongues, six loaves of bread, some sauterne, some claret, some champagne, and a dozen of beer; also one maund of ice, ordered by the captain, to keep it cool on the road. I may also state some sherry I forgot to mention, a bottle of brandy, and some soda-water.

The Court rises temporarily for refreshment.

Were the refreshments you have enumerated for yourself; if not, what portion was for your own consumption?—The refreshments were for both myself and Captain Jervis; Captain Jervis himself, on leaving Howrah Station, took his breakfast off the fowl and tongue, drank a bottle of beer; some time after that he put his head out of the carriage window.

The Witness is here checked by the Court, and desired to confine his answer to the question, giving only necessary explanations.

Witness.] Both for my own and Captain Jervis's consumption. Captain Jervis did not tell me exactly what was intended for myself; but I can tell you what I made use of, some of the fowl, tongue, bread, and some of the beer. I also drank some of the soda-water. I may also add there was some tea and sugar which I forgot to mention, and I made use of a portion of that.

Did you continue eating these things during the whole journey, or up to what point?—I continued eating these things to Delhi, when Captain Jervis ordered me some dinner at Delhi, but I did not get the dinner. After that I made use of some portion of these articles at Kurnaul. That was the last place.

Where did you get your dinners after Kurnaul?—I only had one dinner after Kurnaul; that was at Syrie, and that I paid 12 annas for.

From whom did you receive the money entered in the last account produced by you from the 1st to 31st March?—From Captain Jervis.

Why, in the heading of your copy of the account, did you leave out the word "petty?"—Well, in the first place, it was a petty cash account with Captain Jervis, but at the same time it really was a cash account with me, as I received no money only from Captain Jervis; but at the same time that was not the reason I left it out. Neither can I say why I omitted it, only that the one kept by myself was for my own information, not for any one else's; neither did I think when I presented Captain Jervis with that petty cash account that the copy would ever be called for.

Could anybody connected with His Excellency's household, and knowing that during the dates specified in the "Bazaar Expenses" book you and I were travelling together, have any difficulty in understanding what the charges were that were entered in the bazaar account?—Captain Jervis and I would have no difficulty whatever.

The question is repeated, by order of the Court, at the prisoner's request.

Witness.] Yes, I think anybody would have a great deal of difficulty, as only myself and Captain Jervis knew what they were.

How were you able to remember that the country carts had arrived before the 20th of April?—As several of the bullock train carts with baggage had arrived before that date, and Captain Jervis had remarked to Lady Mansfield that the country carts had beaten the bullock train.

Did no boxes arrive after the date to which you have referred, *i.e.* 20th April?—The last boxes arrived, I think, before the 22nd April, or on that date.

When were you called upon, and by whom, to give your former deposition in regard to the matters to which you have deposed to-day?—I cannot mention the date; by myself; I reported them myself first and foremost, or they would never have been known but for me.

To whom did you report the circumstances?—Myself and Lady Mansfield were looking over the book, and I pointed them out.

When

When did this occur?—I cannot tell you the date; I think as near as possible the commencement of May.

What took place after you had pointed out these things to Lady Mansfield?—Some time afterwards I was called upon to repeat what those items were in presence of his Excellency, and I think Major Flood. It could not have been more than a couple of days afterwards.

Who called upon you to do this?—His Excellency the Commander in Chief.

Relate as far as you can remember, as exactly as you can, what you were called upon to do?—To explain what those expenses were.

Re-examined by Prosecutor.

You were asked whether there was any other book besides the Commander in Chief's bazaar expense book, in which such items as travelling expenses could have been entered at the time. Was it usual to enter anything but bazaar expenses in the bazaar expense book?—No. *E. Abbey.* 19 July 1866.

Have you ever entered anything in this book besides bazaar expenses, excepting the travelling expenses for the journey from Calcutta?—No.

If you had not been ordered by Captain Jervis to enter his travelling expenses in the bazaar expense book, where would you have charged them?—I must have charged them in the "Private Sundries" book.

The Court rises at four o'clock p.m., and adjourns until eleven o'clock to-morrow forenoon.

Eighteenth Day.—Friday, 20th July 1866.

The Court assembles at the same place, at eleven o'clock in the forenoon.
President, members, Judge Advocate, and interpreter are all present.
The prosecutor and prisoner appear in court.

E. Abbey is called into Court, and his Examination continued on his former Oath:

In the first place, the witness requests permission to make a correction with reference to his answer to the first question put to him yesterday on cross-examination, and proposes to read some remarks. *E. Abbey.* 20 July 1866.

Reading the remarks is disallowed, and he is directed to make his correction by word of mouth; the question and answer are read to him.

By *Witness.*] When the question was put to me yesterday, I understood that it was when paying the Commander in Chief's bills that I had asked for a receipt for my own as a sort of discount allowed by tradesmen to the party who pays the bill or those who contract it. If there is any other meaning, would Captain Jervis kindly explain it?

By *Prisoner.*] I don't wish to alter the question, it has been fully answered.

By *Witness.*] Will the Court allow me to explain that the question has another meaning which I discovered last night.

The Court is closed.

The Court decide that the Witness shall be allowed simply to state the other interpretation which he thinks the question will bear, and the answer he will then give.

By *Witness.*] I might, when paying the Commander in Chief's bill at a shop, have asked for a receipt for my own, but I have asked for it many times before—even before I knew that the Commander in Chief had a bill at that place. Some time last year the mess of the 101st contracted a bill with Messrs. Anderson at Simla. It is well known that these establishments allow a mess-sergeant some small discount, and I have several times asked for my bill receipted on that account. This is the truth, and I would have answered it in the same way yesterday, had I understood the question.

The prisoner declines cross-examining on this correction.

Examination by Court.

You stated yesterday that you unpacked the books on the night of their arrival in Captain Jervis' presence; do you know if the book called the ledger was among them?—It was.

Is that the book you refer to? (*Book* 3 *is shown.*)—No; it is a large book, with ledger stamped on it either on the back or the side.

Do you know, then, what has become of the ledger?—It was taken to Captain Jervis' quarters that night; I have never seen it since.

By *Prisoner.*] If the Court would like to see the ledger, I will be most happy to produce it at next sitting.

Where did you get the wines and other refreshments from, that you say you brought up from Calcutta for consumption on the road?—Out of the Commander in Chief's cellar.

Who gave you those wines; did you keep the key of the Commander in Chief's cellar?—I kept the key myself; I took them by order of Captain Jervis.

Was there any surplus of these wines on arrival at Simla; if so, what became of such surplus?—I think there was beer and a little brandy; I don't think there was any wine; whatever the surplus was, was put into store.

[The Witness withdraws.

Tenth Witness for the Prosecution.

Major T. E. GORDON is called into Court; and his Cross-examination commenced on his former Oath.

Major *T. E. Gordon.*

20 July 1866.

HAVE you ever seen the original bill first sent in by Messieurs Mackenzie, Lyall & Company?—I consider that bill that I brought into court the original bill, as far as I know.

The very bill you have referred to quoted three former bills rendered on different dates; how, then, can it be the original bill?—I said, as far as my knowledge of the bill goes; these bills were doubtless rendered to Captain Jervis.

Did you write for the corrected bill, who told you to do so, and when did you write?—I showed the first bill to his Excellency the Commander in Chief, and he remarked upon the bills referred to in the last question put by the prisoner, the details of which were not known. Accordingly, I wrote for these details; the date, I think, is given in the letter accompanying the detailed bill in reply to my reference.

What was the substance of your letter to Mackenzie, Lyall, & Company?—Simply asking for an account, as far as I can recollect; I have stated that before.

Has the statement made by Mackenzie, Lyall, & Company, that the bill "included the purchases made by Captain Jervis," reference to anything you had stated in your letter?—Nothing.

What bill do you refer to when you say you took the "original bill" to his Excellency?—That first bill; there are two bills before the court.

Why do you call that an "original bill," when it clearly is not so; will you look at it again, and say whether it is or can be called an "original bill?"—I never saw any other bill, therefore I considered this an original bill to me in my charge.

Do you see an item of two air cushions erased; do you know when and by whom this was done?—I know nothing about this.

Note by Court.—The Court examine the bill, and do not think the line partially drawn across the item to have been an erasure, but a connecting line carelessly drawn, as the amount is added in the totals.

Do you know for whom these air cushions were bought?—No.

Supposing I had wished to effect a recovery of the value of horse gear taken by me, could I have done so until the bill was received from Calcutta?—I fancy not; unless the prisoner kept a memorandum of the articles he had so taken for himself.

How would such a memorandum show the price?—Well, I generally find the price of things myself when I purchase; Captain Jervis might have done the same.

Examination by Court.

Did you take over the debt of 1,000 rupees due, as you state, at Bombay, for a horse purchased, and for whom was it purchased; did you ever mention the circumstance to the Commander in Chief?—I merely took over the report; I mentioned it to the Commander in Chief, who said he was aware of a horse having been purchased in Bombay; that it was one of his own which had been sold, and afterwards repurchased; a bill for the same has since been received; the price is somewhat under 1,000 rupees.

What made you think that Monteith & Company's account contained articles bought by some members of the staff; was it customary sometimes for officers on the staff of the Commander in Chief to have things put down in his bill?—Because on inquiry as to the amount of things, stable equipments, et cætera, mentioned in the bill, the whole of them could not be accounted for in the Commander in Chief's stable; and moreover, the duffadar told me that some of them had been used by Captain Jervis. I also, on examining the horse clothing, saw that eight sets arrived, of which six were told me by the duffadar to belong to the Commander in Chief, and two to Captain Jervis. There were eight sets charged for in the bill; five warm and three cool sets, which exactly corresponded with the sets that arrived in the boxes. I am not aware of the custom referred to in the last part of the question.

(For *Prisoner.*) How do you account for Captain Jervis' purchases being included in Mackenzie, Lyalls' bill?—Captain Jervis' purchases are, as far as I am aware of, those of 20 February 1866, and consist of furniture. I recollect on the day of the sale of Mr. Bullen's furniture at Alipore a catalogue of the sale being in Captain Jervis', or the Commander in Chief's, possession at the Treasury gate, when his Excellency remarked that it would be a good opportunity to purchase some furniture for his quarters there. Captain Jervis was requested by his Excellency to go to the sale and purchase what he required. I infer that these are the articles he received instructions to purchase.

(For *Prisoner.*) Do you know whether any other person's purchases are included in that bill besides his Excellency's?—I don't know.

[The Witness withdraws.

Twelfth Witness for Prosecution.

BHEE KAREE (Hindoo) is called into Court, makes the prescribed solemn affirmation, and is examined in chief through the Interpreter.

Bhee Karee.

HOW long have you been in the Commander in Chief's service, and in what capacity?—I am Chuprassie, from the 15th March 1866. I am now in his Excellency's service.

Did you come up from Delhi in charge of the carts with the Commander in Chief's baggage this year?—I did.

When did you leave Delhi, and when did you arrive

arrive at Simla?—I left Delhi on the 31st March 1866, and reached Simla on the 16th April.

How long after your arrival at Simla with the carts, were the carts dismissed?—On the day that I arrived at Simla, the 16th, the property was taken off, and the following morning the carts went away.

Bhee Karee.
20 July 1866.

The prisoner declines cross-examining.

[The Witness withdraws.

Thirteenth Witness for the Prosecution.

Colonel D. M. STEWART, Deputy Adjutant General, is called into Court, duly sworn, and examined in chief.

Colonel *D. M. Stewart.*

Were you president of a Court of Inquiry that re-assembled on the 14th of May last?—Yes, I think that was the date.

Do you know if the prisoner was directed to bring to the Court of Inquiry, on that date, the Commander in Chief's accounts, books, papers, &c. Is this a copy of the letter to him?

(*Note.* The prisoner states he has no objection to the copy being received.)

Yes, this is a copy of the letter written to him by the Adjutant General.

It is read and entered:

"Adjutant General's Office,
"Head-quarters, Simla,
"Sir, 14 May 1866.

"I HAVE the order of the Commander in Chief to inform you that the confidential Court of Inquiry for investigating the accusations brought against you, will re-assemble at my office at 12 o'clock noon this day, and to request that you will attend at that hour, with all the accounts, books, papers, &c., in your possession belonging to his Excellency, as they will be required by the Court.

"I have, &c.
(signed) "*H. E. Longden*, Colonel,
"Adjutant General."

"To Captain Jervis,
"H.M.'s 106th Foot, late Aide-de-Camp
"to the Commander in Chief."

(True copy.)
(signed) *D. M. Stewart*, Colonel,
Deputy Adjutant General.

Did the prisoner comply with that order; will you state what occurred with reference to the subject of this letter at the Court of Inquiry?—Captain Jervis came to the Court without any books in the first instance, but after some discussion he went back to his quarters, and returned with one book.

Is this (Book No. III.) the book Captain Jervis brought?—Yes; this is the book.

Did he bring any vouchers or papers; how did he account for not producing any others?—He brought no papers; and he accounted for the absence of other account books, by stating they had not been made up; that they were all in confusion, mixed up with his own accounts.

Was the prisoner made acquainted with the matters which the Court was directed to investigate?—Of course he was; the statements upon which the Court were required to give an opinion were read in his presence, so long as he remained in the Court.

Was this the statement you refer to?—Yes, it is.

The statement is here read and entered:—

T. (mark of Appendix to Court of Inquiry.)

"Since the Court assembled last, certain matters have transpired, which expose Captain Jervis's conduct to the gravest misconstruction. So fatal is the matter to that officer's character for integrity, if proved, that his Excellency has not ventured to put it in the form of a charge. He leaves it to this Court to decide on the nature of the matter, and to record its opinion accordingly. I shall call certain native witnesses, and Captain the Honourable Walter Harbord, to prove that when Captain Jervis was residing on his own account at Mahasoo last year, and giving entertainments, the supplies came entirely from the Commander in Chief's cellars and store rooms, the same being without his Excellency's sanction. It further appears that his Excellency's khan samah, without any sanction from the Commander in Chief, was employed to furnish Captain Jervis's table, and that the expense so incurred, was included in his Excellency's bills. Captain Harbord paid Captain Jervis 220 rupees for his share of the expenses on that occasion.

"If Captain Jervis's ledger, which is now in his possession, shows a large money recovery on these several accounts, for the benefit of his Excellency, I am to say that the fatal want of proper method in business has of necessity exposed his conduct to a dreadful misconstruction. But if, on the other hand, there is no such recovery of money shown, I must leave it to the Court to characterise the transaction referred to.

"On the books being produced and examined, the Court will be able to say whether, in the instance above mentioned, Captain Jervis has been guilty of a fatal imprudence and want of method in business, leading to the misconstruction alluded to, or of dishonesty.

"I have now to draw the attention of the Court to another point, namely, that I propose to submit proof, that on the occasion of his recent journey from Calcutta, Captain Jervis caused his travelling expenses to be charged to the Commander in Chief, without authority, and for the purpose of concealing such charge, caused it to be entered in the book as bazaar expenses; a criminal breach of trust being thus established.

"It is further proposed that this officer availed himself of the Commander in Chief's wine, and put his Excellency to other expenses without authority, when on the said journey, thus also committing a breach of trust.

(signed) "*T. E. Gordon*,
"14 May 1866." "Major."

You said that Captain Jervis heard the statements so long as he remained at the Court of Inquiry; at what stage did he leave, and under what circumstances?—As far as I recollect, he left immediately after the reading of that statement by Major Gordon. He stated further that he could not remain in the Court to be called a thief. I think those were his words. He also stated that he was not well, and that he could produce a medical certificate of unfitness to remain in Court. I at the same time suggested to him that it would be for his own advantage to wait and hear all the evidence produced against him,

Colonel *D. M. Stewart.*

20 July 1866.

him, but he would not act upon the suggestion, and left the Court.

Were you instructed to place the prisoner in arrest? Did you do so, and, if so, when; also state what occurred on the occasion?—I was instructed by the Commander in Chief to place Captain Jervis in arrest. I did so, but I forget the date. I went to Captain Jervis' quarters, accompanied by Majors Flood and Gordon, and then read out to Captain Jervis a memorandum by the Commander in Chief.

Is this (Appendix B.) the memorandum which you read out?—Yes, this is a copy of it.

(This document is again read to the Court.)

After reading that memorandum to the prisoner, did anything further occur?—Yes; I was instructed by the Commander in Chief, after reading the memorandum, to tell Captain Jervis that if he did not now submit to his Excellency's orders, he would be obliged to send him to a military station for the purpose of undergoing trial, and I also, on my own account, urged Captain Jervis to meet the Commander in Chief's wishes, and before I left I understood that it was Captain Jervis' intention to do so. The other officers that were with me advised him in the same sense. I cannot say exactly the words that were used.

The Court rises temporarily for refreshment.

Did you demand the prisoner's sword on placing him under arrest?—No.

Did you repair this omission at any subsequent date; if so, state the circumstances?—Yes; on the 9th of June I went personally to Captain Jervis' quarters for the purpose of demanding his sword, having failed previously in getting it privately from him. When Captain Jervis appeared, I communicated to him the object of my visit, and asked for his sword, which he refused to give up. Captain Jervis stated at the time that he was not aware that he was required by law to give up his property; and after some words, he called on Major Innes to come and witness what passed between us. After Major Innes appeared I repeated my demand, but Captain Jervis still declined to give up his sword, or rather his property, as he called it.

Was there a sitting of the Court of Inquiry after the 14th of May?—I think not; but I really do not recollect.

Are you aware if any correspondence has taken place between the Adjutant General and the prisoner, subsequent to his being warned for trial?—Yes, I believe some correspondence did take place.

Is this the correspondence?—Yes.

A letter from Captain Jervis to Adjutant General, dated 19th June 1866. Appendix B.E.:

A copy of reply, dated 21st June 1866. Appendix B. F.:

A letter from Captain Jervis, dated 22nd June 1866, to the Adjutant General. Appendix B. G.:

A copy of reply, dated 24th June 1866. Appendix B. H.: are handed in.

The *Prisoner* states he does not object to the copies of letters addressed to him.

These are read, marked as above and appended; the second paragraph of Captain Jervis' letter of the 22nd June 1866, being here entered as follows:—

"In reply I have the honour most solemnly and emphatically to protest against this proceeding, as unwarranted by law, principle or justice, and to state, with every respect to his Excellency, that nothing short of physical force will induce me to be present at the Court, and that if dragged there as a prisoner, by violent means, I shall take no part in the proceedings, save to reiterate before the Court my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility he incurs by consenting to take a part in the proceedings."

There is another letter to Captain Jervis from the Adjutant General between the date of the first letter just read, and the assembly of this court-martial. Is this it?—Yes; that is the original draft in Colonel Longden's handwriting.

A copy of letter dated 26th June 1866, from Colonel Longden to Captain Jervis, is read, marked B. I., and appended.

Cross-examined by *Prisoner.*

Under what circumstances was the Court of Inquiry re-assembled on the 14th of May?—It was by order of the Commander in Chief to investigate some fresh evidence that was to be produced, I believe, by Major Gordon.

How was that communicated, and have you the letter or order?—I cannot answer that question without reference to the proceedings. (*After reference*)—There is nothing to show here; I have no order. I presume I received the order either personally or by letter. I presume the Adjutant General can produce the letter if there was one. I am not even certain that there was one.

By *Prisoner.*] Will the Court direct the production of the orders?

By *Prosecutor.*] I submit to the Court that the order for the assembly of the Court of Inquiry forms part of the proceedings, and is thus confidential, and not available for the purposes of this Court.

Can you not state how you received the order to attend yourself?—I received the order from the Adjutant General, either verbally or in writing; I really forget which. Probably verbally, as we sit in the same room.

By *Prisoner.*] I submit that the mere order to assemble cannot fairly or equitably be considered a privileged proceeding; it is connected with a highly important circumstance in the case; and it will be an injury to me if it is not pressed. I further submit that if the order did form part of the proceedings, it would be with the proceedings, which it is not.

As President of the Court of Inquiry, can you state positively that the order referred to, forms part of the proceedings?—I am unable to say, as I said before, that the order was verbal or in writing. There may be something in the Adjutant General's Office to show which way the order was communicated to me. Under these circumstances I am unable to say that the order referred to does form part of the proceedings. I have examined

examined those proceedings and do not find the order; at the same time I am unable to say that this copy is complete; it has passed out of my hands.

By *Prosecutor.*] An order to assemble the Court of Inquiry I consider part of the proceedings.

The Court is closed.

The Court decide to request the witness to produce the order, which it does not appear to them can form part of the confidential proceedings, and he is accordingly requested to apply to the Adjutant General for the order.

The Court is opened and the above read.

By *Prosecutor.*] On looking over the papers in my possession, I find this general order.

This is shown to the witness, who observes he now recollects it as the order re-assembling the Court.

The order is read, marked B. K., and appended.

When did you receive that order, and where?—I am unable to state whether I received it at the office, or at my own house before I went to the office.

How often had the Court sat before the 14th, and on what dates?—

By *Prosecutor.*] I submit that this has nothing to do with the charges.

The question is allowed.

Can you show me the proceedings?—(*On reference*). The Court appears to have sat three times altogether; once on the 10th of May, once on the 11th of May, and on the 14th of May.

Colonel *D. M. Stewart.*

20 July 1866.

By *Prisoner.*] I beg that I may be allowed to see these papers with which the witness has refreshed his memory.

By *Prosecutor.*] These are the confidential papers, access to which has already been prohibited.

By *Prisoner.*] If the prosecutor and witness are allowed to see the proceedings, how are they privileged any longer? It is absolutely necessary for my vindication and defence, to elicit all the circumstances connected with the previous proceedings. I cannot defend myself unless I do. If proceedings or letters are withheld from a court of justice, they are withheld altogether. Their production in support of the prosecution or in aid of the memory of the witness, destroys the privilege, and places the accused at a disadvantage. Having been made use of by the prosecutor and witness for their purposes, it would, I submit, be an injustice to withhold them from me, and I would request that the question in this new phase may be again submitted to the Commander in Chief, if the Court think it beyond their competence to decide.

If his Excellency the Commander in Chief had not convened this Court, and if the prosecution had not been conducted on his behalf, such an anomaly could scarcely have arisen as "privileged proceedings" being handed over to the prosecutor and withheld from the prisoner. His Excellency, on reference being made to him, would have forbidden their production altogether.

The Court rises at 4 o'clock in the afternoon, until 11 o'clock on the forenoon of Monday 23rd July.

Nineteenth Day.—Monday, 23rd July 1866.

The Court assembles at the same place at 11 o'clock in the forenoon.

President, Members, Judge Advocate, and Interpreter are all present.

The prisoner and prosecutor appear in Court.

Colonel D. M. Stewart is called into Court as the witness under cross-examination.

The prisoner applies for permission for Major G. B. Malleson to assist him in the absence of his counsel, who is unwell; permission is given.

At the request of the prisoner the previous examination of Colonel Stewart is read over.

The prosecutor reads his reply to the prisoner's last application, which is entered as follows:—

With respect to the prisoner's argument that the witness and the prosecutor having seen the proceedings of the Court of Inquiry, the confidential character of those documents has been destroyed, I beg to reply that the prosecutor at a general court martial is invariably furnished with these papers for the purposes of his case, and the witness was himself president of the Court of Inquiry, and both witness and prosecutor are staff officers of the department which is charged with the custody of this confidential document.

With regard to the statement that the papers have been placed in the witness's hands for his own purposes, the Court will remember that they were handed to him to enable him to reply to a question put by the prisoner in cross-examination, and it may be presumed with a view to benefit himself, the same question having been objected to by the prosecutor and allowed by the Court.

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By *Prisoner.*] I beg respectfully to submit that the objection urged by the prosecutor is really no objection at all. It is necessary for the defence of my character now under heavy imputation, that these proceedings should be produced. By them alone can I justify myself. And I submit that, having been publicly used in this Court, they have lost the private character which they once had, and have become, to all intents and purposes, the property of the Court. I therefore earnestly and respectfully beg the Court to require their production.

The Court is closed.

The opinion of the Judge Advocate on the application is here entered as follows:—

By *Judge Advocate.*] I submit to the Court that there is nothing anomalous in these proceedings to affect the orders which the Court may pass, or the recommendation they may make relative to the proceedings of the Court of Inquiry.

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In all cases of trials of officers and in intricate cases affecting soldiers, the preliminary investigation is made by a Court of Inquiry. These proceedings, though confidential, are invariably entrusted to the Judge Advocate; they are available to the prosecutor for the purpose of informing him of the matters under inquiry. The previous statements made by any witness are placed at the disposal of the prisoner that he may take notice of any discrepancies; and in the event of any statements before the Court of Inquiry becoming a point at issue before the Court Martial, those statements are made known to the Court.

This course has been followed in the present instance. The statements of witnesses have been perused by the prisoner, and that of Abbey has been made use of for the purpose of his cross-examination.

Likewise on the part of the prosecution, the statement read by Major Gordon before the Court of Inquiry on the 14th of May became a matter at issue before this Court, because it was necessary to prove that the prisoner had been made acquainted with the matters which the Court had been re-assembled to investigate. That statement has, accordingly, been recorded on the proceedings of this Court.

Thus, the entire proceedings of the Court of Inquiry of the 14th May, with exception of its finding, have been made known to the prisoner.

The Court have had sufficient information regarding the Court of Inquiry to be aware that the matters submitted to it on the 10th and 11th May have not been included in the charges submitted to the present investigation, and nothing has been yet stated to explain to this Court how anything which occurred on those days can be matter at issue before them.

The prisoner has stated that it will become so. But, until such has actually happened, I submit that the Court have no grounds upon which they can take action upon the prisoner's application.

As far as regards the prisoner's right to examine any document with which a witness has refreshed his memory, I would observe that the witness inspected the proceedings to look for an order asked for by the prisoner which was not in the record and was found elsewhere, and again to inform the prisoner of the dates on which the Court sat previous to the 14th May, these dates being shown by the headings of each day's proceedings. If it is of importance to the prisoner to test the accuracy with which these dates have been stated by the witness, he may, in my opinion, be permitted, without objection by the Court, to inspect those headings.

It is clear that the Court will not allow a question to be put to cause a disclosure indirectly of any portion of the proceedings of which they will not directly order the actual production.

The Court decide that no grounds have been shown for making a fresh application to the Commander in Chief for the disclosure of the proceedings beyond what has already been shown to be allowable.

The Court is opened, and the above read out.

The prosecutor reads the following address relative to the publication of the 14th day's proceedings in the "Pioneer" newspaper.

By *Prosecutor.*] Before the cross-examination of the witness is proceeded with, I would beg to be allowed to draw the attention of the Court to the following statement, memorandum and letter, which have appeared in the report of the 14th day's proceedings in the "Pioneer" newspaper, dated 20th July, and of which I have no recollection. I shall feel much obliged if the Court will inform me if they form any part of its proceedings.

Extract read:—

Extract from the "Pioneer," dated 20th July, 1866.

"The Court Martial on Captain Jervis at Simla.—Fourteenth Day, Saturday, 14th May, 1866.

(Extract: p. 5, Supplement.)

"At this stage the prisoner requested and obtained permission to have read in Court the memorandum which follows":—

"Memorandum for the Court."

"Having heard with great pain from several sources that an impression is abroad that the questions put by me at a former sitting of the Court to the witness Captain Harbord were put for the purpose of injuring him from vindictive or malicious motives without any benefit to myself, I am extremely anxious (should such impression have been entertained by this Court) to remove the same without delay by stating the object with which these questions were put. Ever since these proceedings have commenced Captain Harbord has, to my certain knowledge, been spreading the most defamatory and injurious reports regarding me, insomuch that I was compelled to address him on the subject in a note, copy of which I append to this. His evidence against me also is calculated to injure me, if credited, or at least is intended to do so. It became, therefore, indispensable for me to show by the questions put, and it will form an important part of my defence to prove, that Captain Harbord's testimony is not testimony that can be safely relied on, because, as I shall probably be able to prove, he has already violated a solemn oath. I hope the Court will allow this to be put on record, or, at all events, read it" (*sic*).

"From Captain E. S. Jervis, Her Majesty's 106th Foot, to Captain the Honourable W. Harbord, dated Simla, the 10th June, 1866:—

"Sir,

"I HAVE reason to apprehend that you have yourself been the means of circulating reports with reference to the disgusting squabble brought about by Sir William Mansfield, which are unfounded. I therefore desire to warn you, that should any information reach me on which I should be at liberty to take action, the result would most certainly be very serious to yourself."

The Court will thus perceive that an attack has been made on one of the witnesses for the prosecution under cover of the name of the Court, but without its sanction or authority; I therefore pray that the Court will take such steps as may appear desirable to them to counteract the effects of this insidious action.

(signed) *W. K. Elles,*
Captain and Prosecutor.

By

By *Prisoner.*] I submit that the extract just read correctly states what I submitted to the Court on the day in question.

The Court is closed.

The Court observes that on the Court closing for another purpose the statement by the prisoner was handed in; on the Court being re-opened it was returned to the prisoner and declined. The prisoner stated he would retain it until his defence. It thus formed no part of the proceedings. The proprietors of the "Pioneer" newspaper are held responsible for publishing this as a portion of the proceedings when it was not.

The reporter attending the Court on behalf of the paper is now called upon to state who furnished him with the statement.

The Court is opened and the above read out.

The reporter states he did not furnish the statement to the "Pioneer" newspaper.

Mr. G. W. Allen, the principal proprietor, on behalf of the proprietors, informs the Court, as follows: The system observed in preparing the reports for the press is as follows: the reporter of the "Pioneer" takes his notes, and from them completes his account of the proceedings at the end of the day. The account is then compared with the particulars taken down by Captain Jervis, and by Captain Jervis sent on to me.

In the instance under notice by the Court the memorandum objected to by the Court was sent to me by Captain Jervis as part of the day's proceedings, and I had no idea but that it was such.

It has been a subject of general remark, I think, that the reports hitherto published by the "Pioneer" have been very fair and very correct, considering the difficulties under which they are compiled.

By *Prisoner.*] I beg to submit that I am in no way answerable for all that appears in the "Pioneer." I did, however, pass on the extract to the editor of that paper, because it had been read in Court. It was not for me to know whether it formed part of the proceedings as the Court was closed at the time. I did not understand the Court to say that it was refused.

The Court is closed.

The Court observe, that they do not admit the prisoner's statement as accurate,

The statement was rejected, and the prisoner stated he would reserve it until his defence.

The Court therefore express their grave displeasure at the prisoner's conduct.

The Court is opened and the above read out.

Cross-examination of Witness resumed.

You stated, in your evidence, that I produced no accounts at first before the Court, and afterwards only a single book. Did I not state my reason for producing no accounts at first, was, that they had not been quite prepared, and did I not express my readiness to fetch the one book that was ready?—Captain Jervis did express his readiness to bring the book, and I understood him to say that he was unable to produce his accounts because they were not ready, in confusion, mixed up with his own.

Did I not at the same time offer to produce the accounts if the Court gave me time?—I am quite unable to say whether he did or did not.

After the examination of the one book which I produced, and after hearing my explanations about my accounts generally, were you then disposed to attribute any criminality to me?

By *Judge Advocate.*] The question appears objectionable, as one of opinion, which, if the witness is asked merely as an individual, is useless to the Court. If the finding of the Court of Inquiry is wanted, its disclosure has already been prohibited. 23 July 1866.

The prisoner states he only wishes to press the question to the extent of having it recorded; he does not want to close the Court.

The Court is closed.

The Court disallow the question.

The Court is opened and the above decision read.

Did you not, after the close of the second day's proceedings, speak encouragingly to me regarding my vindication?—Thinking Captain Jervis was pursuing a very unwise course with regard to the matters under investigation, I followed him out of Court and offered him some advice which, I thought at the time, he felt disposed to take. I recommended him to give a full explanation on all the points demanded by the Commander in Chief, as I thought he was doing himself much harm by ignoring the inquiry altogether. I would add that he gave as a reason for refusing to explain matters, that he had not been treated in a proper way; and I believe I replied to this that after he had given a complete and full explanation, the Commander in Chief would, of course, make amends if he found that he had been harsh or unjust to him; some phrase of that kind, I forget the exact words.

Between the date of your giving me that advice and the date of the charges suddenly brought against me by Sir W. Mansfield had there been sufficient time for me to follow your advice?—I am unable to give any opinion on that point. Some days did elapse, but I don't know how long.

Are you sure that more than two days (Saturday and Sunday) elapsed?—There were the days intervening between the 11th and 14th May.

You have stated that I said before the Court of Inquiry that my accounts were mixed up with those of the Commander in Chief. Are you sure that I did not mean simply that in moving from his Excellency's to Major Innes' house my papers and books, not my figured accounts had become mixed up with his?—I am quite unable to say what Captain Jervis meant, but I have already stated what impression his words left upon me.

Did I not tell you that as all my previous explanations had been received with contumely, I was unwilling to offer any further explanation unless you could assure me that it would be received in the spirit in which it was made?—I cannot give a distinct answer to that question, for though I believe Captain Jervis wished me to give him some assurance of that sort, as I was entirely acting on my own responsibility in the matter, it must be apparent that it was out of my power to do so. I was simply acting in the light of a friend.

The Court rises temporarily for refreshment.

Is this the letter you wrote me at the time, supplementary to your advice?—I did not keep a copy, but this appears to be the substance.

The copy (in print) is read, marked B. L., and appended

Before the new charges were brought against me, had I, at the Court of Inquiry, received the

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smallest intimation that further charges would be preferred against me, and were not those charges as unexpected by the Court as by myself?—I can answer for myself; I knew nothing of the charges which were received on the 14th, when I gave Captain Jervis the advice referred to.

What were the charges on which I was arrested?—Captain Jervis was arrested by order of the Commander in Chief, on a memorandum written by his Excellency, which I read out to him.

In the memorandum referred to, his Excellency bases his charges partly on the direct charges brought before, and on the finding of, the Court of Inquiry; have you any objection to state what that finding was, which thus forms one of the bases of the charges against me?—

By *Judge Advocate.*] The question for the Court's decision is not whether the witness has any objection, but whether the Court will allow the question to be put.

By *Prisoner.*] The witness has already stated the arrest was founded on the Commander in Chief's memorandum.

By *Prosecutor.*] I submit that the witness cannot be examined on the finding of the Court of Inquiry, a privileged document which cannot be produced in Court.

The Court is closed.

The question is disallowed.

The Court is opened, and the above decision read.

Is there any law or regulation requiring an officer to give up his sword after he has been placed in arrest?—I am not aware that there is either law or regulation on the subject.

Did I not say, when you asked me for my sword, that I would give it up if you would show me the authority on which you asked for it?—I think he did say so.

You stated in your examination in chief that you did not take my sword when you put me under arrest, why did you not do so?—Because I forgot it.

Have you ever heard of a case in which an officer, placed under close arrest, for having refused to give up his sword, has been held by his Royal Highness the Commander in Chief in England to have been justified in that refusal?—I have no knowledge of such a case.

Can you say why such a long interval was allowed to elapse between the date of my having been put under arrest, and the production of the charge against me for refusing to give up my sword?—The omission was brought to my notice on the day I placed Captain Jervis in arrest by one of the officers who accompanied me; I was in a hurry to get to office for some reason; I forget now why; and I remarked that I could get the sword at any time. I think, a day or two afterwards, I went to Captain Jervis' quarters for the purpose of asking him to give me his sword; he was not at home; I believe I went a second time to his quarters for the same purpose; on that occasion he was not at home. I then wrote to him a private note, which I presume Captain Jervis can produce, but it was to the effect that I wished to get the sword. Captain Jervis did not answer my note. After this an official communication was made to him by the Adjutant General, which resulted in my going to his quarters on the 9th of June; what happened on that day I have already stated to the Court.

Re-examination by Prosecutor:

What were the prisoner's exact words when he told you on the 14th May that his accounts were mixed up with the Commander in Chief's?—I cannot give his exact words; Captain Jervis said that his accounts were not made up; that they were papers, and all mixed up with the Commander in Chief's; that is what I understood him to say.

Do you understand it to be a custom of the service for an officer to give up his sword when he is placed under arrest?—Yes; I think it is the invariable custom; I have only placed an officer once before in arrest, and on that occasion I remember taking his sword.

When the prisoner said that he would give up his sword if you would show him your authority for demanding it, what reply did you make?—I said that I was then acting under the authority of the Commander in Chief, that I had no other authority.

[The Witness withdraws.

The Court is closed to consider the following memorandum from the prisoner:

I would beg most earnestly and respectfully that the Court would be pleased to grant me the privilege, which has never been denied to any witness, that of correcting a statement made in Court.

With reference to the reports of the "Pioneer" newspaper, I would beg permission to state that I have been informed by Mr. Allen that my counsel, Mr. Taylor, who is unfortunately not here to-day, stated to him that the paper in question was "read, but not recorded." I was not personally aware of this at the time, and I would beg permission to modify to this extent my previous statement. Mr. Taylor also informed Mr. Allen that it did not form part of the proceedings. Mr. Allen himself copied the memorandum in Court.

The Court is opened and the entry of the above memorandum communicated.

Fourteenth Witness for Prosecution.

Major P. R. Innes, Invalid Establishment, is called into Court, duly sworn, and Examined in Chief.

Major *P. R. Innes.*

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Were you present on the 9th of June last, when Colonel Stewart demanded Captain Jervis' sword; he, Captain Jervis, being under arrest at the time?—Yes, I was.

Will you state what occurred on the occasion?—At the time that I came into the verandah, where Colonel Stewart was standing with Captain Jervis, I was not aware that Colonel Stewart had demanded Captain Jervis' sword. Colonel Stewart told me that he had done so, and appealed to me to assist him in inducing Captain Jervis to give up his sword. I told Captain Jervis

Jervis that, whether held to be legally right or wrong in refusing to give up his sword, I thought it a great pity that he should do so, as it was only complicating matters. Captain Jervis made me no reply, but said to Colonel Stewart, "Here is my witness, now you put your question." Colonel Stewart then said, "I have come to take your sword, by order of the Commander in Chief, Sir W. Mansfield." Captain Jervis replied, "Tell Sir W. Mansfield, in reply, he is already sufficiently in my debt, and therefore I am not inclined to hand him over any more of my property." Colonel Stewart then said, "Then you refuse to obey the order?" The prisoner replied, "I warn you not to convey back so false a reply. My answer simply is, that I refuse to hand over any portion of my property to Sir W. Mansfield, who is already sufficiently in my debt. I am well aware of the clause in the Act under which Sir W. Mansfield has arrested me, but I know of no order or regulation under which he can place a lien on my property." Colonel Stewart was then leaving the house, when Captain Jervis told him, "that if he desired it, he would fetch pen, ink, and paper, and write his reply." Colonel Stewart said he considered that unnecessary, and he left the house.

Major P. R. Innes. 23 July 1866.

The Court rises at 4 o'clock, P.M., and adjourns until to-morrow forenoon, at 11 o'clock.

Twentieth Day.—Tuesday, 24th July 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon.
President, members, judge advocate, and interpreter are all present.
Prisoner and prosecutor appear in court.
Mr. *Tayler* is again in attendance as counsel to the prisoner.

24 July 1866.

Major P. R. Innes is called into Court; and his Examination in chief resumed on his former oath.

Do you recognise Captain Jervis' handwriting and signature on these papers?—Yes, I do.

The two papers, certificates of discharge of hackeries, on the 16th April 1866, at Simla, are read, marked B.M. and B.N., and appended.

The prisoner declines cross-examining. [The Witness withdraws.

By *Prosecutor.*] With the permission of the Court, I wish to recall a former witness, Baboo Khan, to speak to a material point which has arisen since his examination, namely, the date of arrival of the house-books at Simla.

Baboo Khan is recalled into Court; and Examined in chief through the Interpreter, on his former solemn affirmation.

Baboo Khan.

When the Commander in Chief was leaving Calcutta, do you remember the house-books being packed up?—Yes, I remember the books were packed up.

Do you remember when these books arrived at Simla?—When the things came from Calcutta they came on the hackeries. The boxes were opened, and the books were taken out. The account book (*Witness specifies a large book*) went to the new house being built by Captain Jervis, and the others, that is, small books, were left at his Excellency's residence.

What chuprassie came in charge of the carts?—Bhee Karie and Khooseal; these two chuprassies came in charge of the carts.

The prisoner declines cross-examining.

[The Witness withdraws.

The prosecution is closed.

By *Prisoner.*] For my own actual requirements, that is, to enable me to put in a list of witnesses available here and in Calcutta, and to prepare a short preliminary address, pointing out the line of defence which I propose to take, two days will be sufficient; but, as a certain time must be allowed for the Calcutta witnesses to arrive, if only two days are now allowed, the Court will have to adjourn again.

If a week or eight days is now allowed, the sittings can probably go on continuously until the close of the evidence for the defence, when a second interval will be asked for, to enable me to prepare my final defence.

I leave the matter entirely to the Court.

The Court is closed.

The Court decide to inquire of the prisoner, if a delay of eight days is now allowed, whether he guarantees the presence then of his Calcutta witnesses from arrangements already made, and whether then no question will be raised as to the attendance of any further witnesses.

By *Prisoner.*] No arrangements have yet been made with the Calcutta witnesses, and it is quite impossible to say whether, at the close of the evidence which will be adduced, any of the more distant witnesses may be necessary. I am under the impression that they will not, but I cannot in justice to myself now say absolutely that they may not.

If they are, the reasons will be submitted for the Court's consideration and decision on the point. I would add that if eight days are allowed there is every probability that the Calcutta witnesses will arrive in time to be examined, after the evidence of the Simla witnesses is gone through, as their evidence will probably occupy a week.

The Court is closed.

The Court decide to allow the prisoner two days for the purpose applied for in his first request; he will then be expected to explain why he has not already taken steps to cause the attendance of his Calcutta and all such available witnesses; he having been invited by the Judge Advocate before trial to send in his list of witnesses.

The Court is opened and the above decision read.

By *Prisoner.*] The witnesses I require from Calcutta are members of the firms of Monteith, Mackenzie, Lyall & Company, &c., and till the evidence for the prosecution was closed, it was simply impossible for me to say that they would be wanted; their evidence will refer to collateral points raised in the course of the prosecution itself; and my belief was that it was for the Court and not me to adopt the necessary proceedings for summoning them.

The Court decide on this additional explanation to give the prisoner the option of a delay of two or eight days.

By *Prisoner.*] I will take eight days. To prevent further misundertanding, I take the liberty of pointing out that I cannot name the individuals in the firms; but I conclude the Judge Advocate can call on the firms to send up any man acquainted with the facts on which I require evidence, if I state it to the Judge Advocate.

The Court rises at 1 o'clock, and adjourns until 11 o'clock in the forenoon, of Thursday, the 2nd August.

Twenty-first Day.—Thursday, 2nd August 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon.

President, members, Judge Advocate, and interpreter, are all present.

The prisoner and prosecutor appear in Court.

The prisoner asks permission for his friend, Mr. W. Tayler, to read a short address; which is granted.

The address is read and entered.

Memorandum for the consideration of the Court.

At the commencement of this trial, I submitted a list of witnesses, residing in Europe, whom, at the time, I believed it would be necessary to summon for the purpose of proving the system on which Sir William Mansfield's household accounts had for many years been kept; as also to establish the fact that certain items of expenditure had, at the discretion of the officer in charge, been constantly charged in the first instance to his Excellency, and subsequently recovered (sometimes after the interval of months), and re-credited to his Excellency. In anticipation also of some evidence being brought against me which it might be necessary to confute with counter-evidence, I added to the list the names of certain parties resident in Bombay, who might depose to other collateral facts, which appeared likely to arise in the course of the trial.

When, however, the prosecution was brought to a close on the 24th instant, it appeared to me that the evidence on its part had so completely failed to establish anything in connection with the most important part of the charges which affect my character as a gentleman, that I might probably dispense with the greater number of these witnesses, and I therefore solicited a short postponement to enable me to enter on the examination of other witnesses, whom I then still considered it advisable to examine; and also to prepare a short preliminary address with the view to point out to the Court the general line of defence which I proposed to adopt.

This indulgence the Court was good enough to grant me; and an adjournment was sanctioned till to-day.

I now take the liberty of representing to the Court, that on further consideration, and more close examination of the evidence, I have come to the conclusion that I shall be able to prepare my final defence on all the essential questions involved in the charges without any further evidence. It is true that there are many minor points, which I might establish by examining certain witnesses, but these points are comparatively unimportant, and in consequence of the singular failure of the prosecution, the evidence in connection with them may be safely dispensed with.

For the same reason, I am glad to be able, without prejudice to my cause, to abstain from further following up the matters which were mooted in the cross-examination of Captain Harbord, and Abbey. The questions which I put to those witnesses during the prosecution, I have already informed the Court were put for the purpose of invalidating their evidence by reference to their general character, at a time when it was impossible for me safely to neglect any point in my defence, and not as it has been busily reported, through vindictiveness or revenge; and I rejoice that the weakness of the prosecution, and if I may say so without offence, the special weakness of the evidence given by both these witnesses, enables me to abstain from further pressing such painful questions.

I propose, therefore, with the Court's sanction, to prepare at once my final address, a course which will save the Court much time and trouble; but as this address must necessarily

sarily be elaborate, involving a thorough review of all the varied circumstances connected with the case, and an analysis of the whole evidence, it will be impossible for me to complete it in such a shape as to be worthy of the Court's consideration, before Monday next, and I therefore crave the indulgence of a further brief postponement until that date, the 6th instant. 2 August 1866.

(signed) *Scott Jervis*, Captain,
106th Light Infantry.

The Court is closed.

The Court decide to adjourn until 11 o'clock, on the forenoon of Monday, the 6th August.

The Court is opened, and the parties are informed accordingly.

By *Prisoner.*] May I request the Court to call on Sir W. Mansfield to produce Messieurs Lazarus & Company's original bill for furniture supplied last cold weather, which I handed to his Excellency. Also, in support of my character, a letter written by his Excellency to Sir Bartle Frere, recommending me for the Under-Secretaryship to Government, and Sir B. Frere's reply.

By *Judge Advocate.*] It appears that the proper course will be for the prisoner to require me to summon his Excellency the Commander in Chief, or such other person as he may name, to produce Messieurs Lazarus & Company's bill. That bill, before production to the Court, will require to be identified. The other documents being of the nature of testimonials, according to the practice of courts martial, can be admitted on simple production.

By *Prisoner.*] I submit that if his Excellency produces the bill, as he has produced other bills, it will be quite sufficient to satisfy the Court. The course proposed by the Deputy Judge Advocate General compels me to examine witnesses for the defence, and thus gives the prosecution a right to reply, which otherwise it has not. I submit to the Court that there can be no reasonable objection to the production of the bill, and that it will be satisfactory for the Court to see it.

By *Judge Advocate.*] The Court will be aware that they have as yet received no documents which have not been identified by witnesses. I should also mention that the production of documentary evidence on the part of a defence gives a right of reply to the prosecutor.

By *Prisoner.*] I won't ask for the bill.

By *Court.*] The Court decide that the correspondence with Sir Bartle Frere be applied for by the Judge Advocate.

The Court rises at five minutes to 12.

Twenty-second Day.—Monday, 6th August 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon. 6 August 1866.

President, members, Judge Advocate, and interpreter are all present.

The prisoner and prosecutor appear in court.

Defence.

The prisoner hands in an application for permission for his friend, Mr. W. Tayler, to read his address, which is read, and entered.

Understanding that some objection is likely to be made to Mr. Tayler's reading my defence, I respectfully submit to the Court that it would now be most cruel upon me not to allow Mr. Tayler to do so.

The Deputy Judge Advocate General has distinctly stated that there is no objection, and I left the Court at the last sitting under the complete conviction that the point had been conceded. The defence is only just finished, and there are additions and alterations in Mr. Tayler's handwriting which render it extremely difficult for any one else to read it.

The Bengal regulations have been once quoted against me, and it will be hard to do me injury now, because they are said not to be applicable.

I earnestly submit that it will be a great injury to me now to prevent Mr. Tayler from reading.

The Deputy Judge Advocate himself informed me that it had frequently been allowed, to his certain knowledge, and there can be no real or substantial reason for depriving me of the privilege.

If it is not allowed, I must ask for an adjournment to allow a copy to be made.

The Court give permission for the defence being read by Mr. Tayler.

It is read and entered, as follows:—

6 August 1866.

DEFENCE.

Mr. President and Gentlemen,

Before I enter upon the subject-matter of my defence, I am anxious to solicit your attention to the peculiar position in which I stand, with reference to his Excellency the Commander in Chief. I hope I need not now assure you, gentlemen, that I am most anxious to avoid everything that may bear the least appearance of disrespect or discourtesy, either in the language or the matter of this address; the more so that I am conscious of having, in the earlier part of the proceedings, been occasionally betrayed by the excitement of the moment into some expressions of irritation and warmth, which may at the time have been considered disrespectful, and for which I would now desire to express my sincere apology, at the same time offering to you, gentlemen, my respectful thanks for the patience with which you have listened to the tedious and protracted cross-examination of the principal witnesses, and the protection which you have more than once afforded me, when I ventured to claim such protection at your hands. But while I thus desire to avoid everything that you, gentlemen, may consider as trenching on the respect which I owe to his Excellency the Commander in Chief, I would wish to point out that it is altogether impossible for me effectually to vindicate my character, especially in regard to the military offences imputed to me in the latter charges, without setting forth facts which, more or less, cast reflection on his Excellency's proceedings, and which, were the exposition not indispensable to my defence, I would have gladly passed over in silence.

It is impossible, gentlemen, to deny that in this case, perhaps for the first time in the annals of military jurisprudence, his Excellency bears the twofold character of public and private prosecutor; that is, while his Excellency, in his public capacity of Commander in Chief of Her Majesty's Forces in India, has convened this Court, and originated the charges, those charges are all, more or less, connected with his Excellency's private affairs and private interests. I do not, gentlemen, make this statement now in disparagement of his Excellency, but solely for the purpose of showing how this double capacity affects my position, and to guard myself against the possible imputation of unnecessarily assailing his Excellency's acts, when I am, in fact, merely vindicating myself on points which are of grave importance to my character.

I would, therefore, at the outset of this address, earnestly entreat you, gentlemen, to bear this peculiarity of the case in mind, and so long as I avoid, as I shall do, all disrespectful expressions and irrelevant matter, allow me full latitude in setting before you those facts which are alike the characteristics of the case and the ground-work of my defence.

Before proceeding to a narrative of those events which occurred previous to my first arrest on 15th May last, a narrative which I conceive to be essential to the true understanding of all that followed, I would very briefly allude to the plea which would naturally be the first in order of the subjects to be discussed, had it not been overruled by you, gentlemen, at the commencement of this trial. Having been so overruled, I do not propose to offer any further remarks on the subject, although I cannot but feel that it is one of vast importance to every officer in the army, and one which I have good grounds for believing will form a subject for grave discussion hereafter, both in India and England; I refer, gentlemen, to the subject of legality, involving the questions, first, whether it is lawful to take military action in matters of a purely personal and private character; and, secondly, whether those social and private duties which officers undertake on the personal staff of a Commander in Chief, or other high officer, are military duties, for neglect or misconduct in which he can be called to military account.

Passing over this subject, then, which has already been placed on record in the protest which I submitted at the commencement of the trial, I proceed to the narrative of those occurrences out of which, as I apprehend, gentlemen, you will clearly perceive all the subsequent matters have arisen. I shall state nothing that is not supported by documentary evidence, which has either already been exhibited or which I shall now present; and with a view to the clearer understanding of the subject, I shall trespass on your time by reading some of those documents, as I arrive at the matters to which they relate.

For several years I have been on his Excellency Sir William Mansfield's personal staff, both in Bombay and Bengal. In the former presidency I superintended the management of his Excellency's household in 1863–64, and I resumed that superintendence, at his Excellency's special request, in September last, when I took over charge from Captain Christie. On the 1st of May, while absent at Nalderah, on the banks of the Sutlej, I was startled by the receipt of a letter from Major Flood, his Excellency's military secretary; a letter which I shall here ask permission to read.

"My dear Jervis, "Simla, 1 May 1866.

"I am desired to inform you that the Commander in Chief has learned, with more pain and regret than he can well express, that, instead of acting up to his wishes with regard to organising for him a farm-yard, consisting of sheep, poultry, &c., you have done so on your own account, and have yourself been actually purveying for the supply of his Excellency's table.

"Sir William could at first hardly credit this information, and accordingly subjected the butler, Abbey, to a formal examination in my presence, having first warned him to be most careful in his replies, as the matter involved might seriously affect your character.

"I am

"I am to request that on your return to Simla you will give me early intimation of your arrival, when I am to show you a copy of the above-mentioned examination, as well as what the Commander in Chief has written on the subject. 6 August 1866.

"The impropriety, to say the least of it, with which you stand charged is, in his Excellency's opinion, so serious, that he declines to see you until the impressions so fatal to your character are removed.

"Truly yours,
"Captain Jervis, A.D.C." (signed) "*Fred. Flood.*"

Astonished and shocked at this unexpected accusation, I immediately replied in a letter, which I will also read; and if that letter is considered incoherent and abrupt, you, gentlemen, will feel no difficulty in interpreting the cause.

"My dear Flood, "Nalderah, 2 May 1866.

"NEVER was I more astonished in my life than when I read your letter, regarding my not having established a farm for Sir William Mansfield, in which you tell me that his Excellency is so far of opinion that I have been guilty of an impropriety, if not more, that he refuses to see me till the impressions he has formed regarding my character are removed. This is indeed serious, and I am unable at present to recover from the blow conveyed in your letter.

"There are the sheep, poultry, &c., and there are the accounts; they will prove all that can be required. The whole Sir William may inspect. The whole, or whatever portion as he wishes of the farm, such as it is, Sir William can have at any time, or take it over from its commencement, with its account, should he so desire.

"Abbey mentioned to me, the other day, that Lady Mansfield thought that, on taking charge of the establishment, she was bound to take over the farm, &c. I told him that when her Ladyship mentioned the matter again, to tell her that I did not wish her to take over any more than was convenient to her; but that anything she wished to have might, of course, be taken.

"You do not tell me what Sir William's impressions are, and therefore I cannot explain away anything to which his Excellency is disposed to take objection, or would gladly do so. But I return to Simla immediately, to give every information his Excellency may ask for; and though, of course, I know I can explain any point which his Excellency may think requires explanation to his entire satisfaction, I am to the last degree pained and distressed at the idea of his Excellency thinking that I could do anything at all opposed to his interests.

"Very truly yours,
(signed) "*Scott Jervis.*"

But, gentlemen, whatever defects there may have been in the style and expressions of that letter, I need hardly point out that it was at least a positive, distinct, and undeniable repudiation of guilt. What, then, was my astonishment to find, by a minute of his Excellency's, that he had interpreted it as an admission of the allegations made against me by the butler, Abbey.

Acting on this interpretation, the correctness of which I will leave you, gentlemen, to determine, his Excellency then recorded two minutes on the 3rd and 4th of May respectively, which I now read:

"The Commander in Chief has read this morning Captain Jervis's private note to Major Flood.

"The acknowledgments contained in that document are sufficient proof of the butler's truth in the evidence taken by his Excellency on the 30th of April; that is to say, that Captain Jervis has been executing retail operations himself for the supply of the Commander in Chief's table.

"The butler being absent this morning, a note was brought from Colonel Middleton, the same being a regular chit for supplies, as if the Commander in Chief's premises were a bunneah's shop for the neighbours.

"This chit was directed to his Excellency's butler, it being clearly the result of the system instituted by Captain Jervis. A letter subsequently received from Colonel Middleton showed that the course he pursued was at Captain Jervis's request.

"Under these circumstances, his Excellency has no hesitation in saying that Captain Jervis must cease to be on his staff, forthwith.

"He will render his accounts to Major Flood, assisted by Major Gordon, the same being audited back to the time when Captain Jervis took charge from Captain Christie.

"By order,
"3 May 1866." (signed) "*Fred. Flood*, Military Secretary."

"Captain Jervis's note of the 3rd of May has been laid before the Commander in Chief.

"His Excellency observes that there can be no misconception about the matter which requires the withdrawal of Captain Jervis from his place in his Excellency's family.

"It is incontrovertibly proved, that without the knowledge or sanction of the Commander in Chief, his premises have been used for mercantile transactions by Captain Jervis.

6 August 1867.

"2ndly. That his Excellency's English servant has been used as an agent for the like purpose without authority.

"3rdly. That gentlemen have been invited to deal with regard to the above.

"4thly. That dealings of a retail character have actually taken place with such gentlemen in consequence.

"His Excellency forbears from recurring to the matter personal to himself, as set out in the papers already forwarded to Captain Jervis by his orders.

"It is clear that Captain Jervis, as an officer, has infringed the Indian regulations, by having, without leave from the Government of India, engaged in direct operations of trade; and secondly, the course he has pursued was calculated to tarnish the reputation of the Commander in Chief himself, it having been understood, as his Excellency knows, that these transactions had his full sanction.

"The question was lately put in his Excellency's drawing-room, whether the Commander in Chief did not keep a produce farm, the inference being clear in the speaker's mind that his Excellency was obtaining trading profits.

"Captain Jervis has therefore ceased to be a member of his Excellency's family.

"He is permitted to draw his aide-de-camp's pay until the end of the current month.

"As already directed, he will have the goodness to render his accounts without delay to Major Flood and Major Gordon.

"His Excellency proposes to take upon himself the responsibility of completing the aide-de-camp's house.

"Major Gordon will be requested to take charge of the estate at once, to receive all accounts of the building, after which he will obtain his Excellency's orders.

"It is most expedient that Captain Jervis should leave Simla as soon as his accounts are rendered, for the purpose of rejoining his regiment, according to orders, which will be communicated by the Adjutant General.

"By order,
(signed) "*Fred. Flood*, Major,
"Military Secretary."

Thus, then, gentlemen, you will perceive first, that the *ex-parte* evidence of a menial servant was taken by his Excellency himself, behind my back, and without my knowledge, a proceeding on which I forbear to comment; my indignant, though respectful denial was interpreted into an admission: my offer of explanation was disregarded; I was forbidden to see or speak to his Excellency, and was eventually dismissed from his house.

This brief narrative is indispensably necessary, as I have before stated, to the right understanding of all that subsequently took place. I have confined myself to the bare recital, and have forborne from criticism or comment, leaving you, gentlemen, to draw such inferences as may suggest themselves to you, on a careful consideration of the facts.

I now arrive at a circumstance of which no mention is made in the correspondence, but which will not, I imagine, be disputed.

Some days after the minute recorded by his Excellency on the 3rd of May, his Excellency sent for a friend of mine, Major Innes, and held with him a long and confidential interview, the result of which was a proffer on his Excellency's part, of an amicable adjustment of the dispute, accompanied with an offer to me of leave to proceed on furlough to England, and an assurance of future assistance.

Before, however, my answer could be conveyed to his Excellency, his Excellency had changed his purpose; for on the same day, for reasons which I have not yet been able to fathom, he convened a court of inquiry, before which I was summoned.

That court sat on the 10th and 11th of May. The matters brought before it on both those days were all connected with the circumstances which had formed the subject of Abbey's allegations, but as none of these matters have formed ground of formal charges against me before this court, I conclude they were either not substantiated, or were, at all events, not considered sufficiently important to be so employed.

At the close of the second day, Colonel Stewart, the president, followed me out of the court, and advised me to submit an explanation, advice which he subsequently repeated in a letter which has been filed in the Court, and which I will now read:

"My dear Jervis,

"LONGDEN agrees with me in thinking that you should even now submit a full explanation in writing for the consideration of his Excellency, and he bids me say that he will undertake to submit it to Sir William.

"If you will take our advice in a proper spirit, I feel sure you will never regret it.

"Yours truly,
"12 May 1866." (signed) "*D. M. Stewart.*"

In accordance with this advice, I was actually engaged in preparing an explanation, when I was again startled by an intimation on the 14th of May, that the court of inquiry had been suddenly and unexpectedly re-assembled, and entirely new matter of accusation preferred against me.

And this brings me, gentlemen, to the first charge publicly preferred against me before this court.

I need scarcely remind you, gentlemen, that the cream and essence of this charge, in all

all its instances, the sole element which implies or constitutes criminality, is the dishonesty charged, and the intent to defraud the Commander in Chief. I need hardly point out that the mere act of borrowing or using his Excellency's stores or wines is in itself, viewed morally, an indifferent act, and is guilty or innocent solely with reference to the intention with which the act was committed. It is scarcely necessary also to point out that the guilty or fraudulent intent must, under the charge, have existed at the time of taking, otherwise the charge is without meaning. 6 August 1866.

Looking then, gentlemen, at the matter as it stands, you will find, I apprehend, that notwithstanding the elaborate character of the evidence adduced by the prosecution, the case, in reality, lies in a nutshell.

The facts are these:—

While vested with the entire management of his Excellency's household, and entrusted, as his Excellency has himself informed you, with plenary and unrestricted powers, I borrowed and used certain wines, stores, and horse-gear of his Excellency's for my own purposes.

His Excellency publicly charges me with fraudulent misappropriation in so doing.

I admit the act, but deny—indignantly deny—the fraud.

It is for you, gentlemen, I need hardly say, to decide between us.

Gentlemen, there is a well-known maxim of law, not a maxim of questionable justice or partial application, but one which is universally accepted and invariably acted upon, if not throughout the civilised world, at least in every court of justice in Great Britain, viz.:—that innocence is always to be presumed or, to use the words of a celebrated author on evidence, "The legal presumption of innocence is so strong, that no evidence will be sufficient to repel it, unless it be distinct and positive, so as to prove the criminality of the accused beyond all reasonable doubt."

For the present, gentlemen, I take my stand on this sacred principle, and I ask you to say what evidence there is to repel this presumption in the present case. Perhaps, indeed, I might venture still further to ask, what evidence there is to justify, for a moment even, the suspicion of criminality? For myself, I can truly say that I read the evidence with bewilderment and wonder. When I found that a court martial had been actually convened, and read the charges on which I was to be arraigned, I anticipated that, at least, some legal and logical evidence would be adduced. My impression, my apprehension, was that those parties who had so busily employed themselves in poisoning his Excellency's ears, would at least have prepared or fabricated something that might pass current for proof; that the khansaman would have been prepared to say that I had taken stores in secret—in the silence of the night, while there was no one to witness the deed! That the Abdar would have told of wines surreptitiously abstracted, or secretly sold—that Abbey would have disclosed some cunning devices or secret schemes of peculation and profit!

But what is the fact? Not only is there not a jot, not a tittle of evidence on these, or any such points, but the witnesses for the prosecution, as I shall hereafter show, have actually established the very circumstances which are in themselves proofs, not of guilt, but innocence! And it is this extraordinary circumstance, which has rendered it unnecessary for me to call any witnesses of my own. For, gentlemen, if for the purpose of rebutting the charge of "fraudulent intent," I were to search the four corners of the globe, I could discover no better, no more conclusive evidence than that which has issued from the mouths of these men. I can imagine nothing more conclusive as to the absence of all fraudulent or guilty purpose, than the fact that all that I did was done openly, publicly, in the usual course, through the instrumentality of others, with records of the articles taken, and witnesses without number to the act of taking.

A few words will be sufficient, gentlemen, to show you, by reference to the evidence given by the several witnesses, that what I have here stated is the truth.

His Excellency Sir William Mansfield, who has proffered himself as the first and principal witness against me, has disclaimed all personal knowledge whatever of the facts.

On the question, therefore, of "fraudulent intent," his Excellency's evidence amounts to nothing. He knows nothing about it himself, but he suspects me of the desire to rob him! and on that bare suspicion, he arraigns me before this court, on a charge which his Excellency himself observes, would, if I had been tried by a criminal court, under the penal code, have subjected me to the punishment of felony; while with an inconsistency that I confess to me is totally unintelligible, he said in his deposition that the fact of misappropriation was not the issue to be tried before this court.

Passing by his Excellency's evidence, then, we come to that given by the native servants, the khansaman and the abdar.

Both of these witnesses depose to my giving orders for certain stores and wines to be taken out to Mahasoo, for certain public entertainments which I then gave in conjunction with Captains Christie and Harbord—to the entire openness and unusual publicity of the whole proceeding, butler, chuprasees, khidmudgars, and coolies, all present at the time, and co-operating in the removal; an account of the things taken being entered in the consumption book.

The next witness, Captain Harbord, states that he joined in these parties; that the friends invited were principally his own; that he knew the stores belonged to his Excellency, because he heard me give the khansaman the order to supply them, though he knows nothing of the amount; that he had no scruple in eating those stores, but would have thought it not, gentlemen, "fraud" or "felony," but "ungentleman-like," to have drunk the wines, because they are not so easily replaced as the other provisions.

6 August 1866.

You will not fail to perceive, gentlemen, that this evidence as regards the substance of the charge, that is, the "fraudulent intent," is all in my favour, a circumstance which is, to say the least, remarkable. but it is not the only remarkable fact connected with this prosecution.

The first charge, as you will have observed, contains a carefully detailed list of specific wines and other stores, which I am charged, first, with "dishonestly misappropriating;" and "secondly," with entering in the household books with intent to defraud the Commander in Chief.

It would naturally be supposed from this that the articles thus carefully specified, down to the smallest item, had, at all events, been found entered in the books, as laid in the charge; no such thing. His Excellency himself produced the books which contain the only entries of these things, and read out the entries.

Those entries do not contain one-tenth of the articles which I am charged with stealing.

On what evidence, then, was the list prepared? Not on the testimony of the khansaman, for he could state no particulars whatever. Not on that of the Abdar, for his memoranda were avowedly imperfect, and though he made a random statement about 33 dozen of sorts, I do not imagine you will regard such testimony as altogether reliable.

With the Court's permission I will read the evidence of Nuna Khan, Abdar.

"Examination continued of Fourth Witness, NUNA KHAN.

"By the *Prosecutor.*] As the answer to the last question was very imperfectly recorded, I beg the Court will allow the question to be put again.

"*Q.* Allowed. How much wine did you send to Mahasoo?—*A.* Captain Jervis ordered that wine expended day by day should be written down by a writer, and that the wine account so written down should be shown to Captain Jervis daily at 10 o'clock, in the office, to be initialed by him. Captain Jervis used to come about 10 o'clock to the office.

"*Q.* The first time that you sent wine to Mahasoo, how much did you send?—*A.* As much as was ordered by Captain Jervis to be sent, and that quantity was put down on a memorandum.

"*Q.* How much did Captain Jervis order you to send the first time?—*A.* Captain Jervis gave me no orders to write down; he ordered, whatever may be used, have it written down by the writer, and show it to me, and I will sign it.

"*Q.* Although you had no order to write it down yourself, did you keep no memorandum for your own information?—*A.* I kept none, except that sometimes I wrote it on the wall, and sometimes on a piece of paper.

"*Q.* Where is the paper on which you wrote your memo.?—*A.* The papers were in the chuprassee's house, from the chuprassee's house they were sent to the Persian interpreter's office, the Persian interpreter sent for me, and showed them to me; whatever was in them he told me; but what was here and there he could not tell me.

"*Q.* Do you recognise this paper, and what is it?—*A.* The paper is, from my recollection, a memo. of the wine account; part is in it, part is not.

"*Q.* Have you written down on that paper what wine you sent to Mahasoo?—*A.* Yes, in this paper some part is written, some is not.

"*Q.* Show where you have written what you sent to Mahasoo?—

"Witness shows the page in which it is written; some is written, some is not.

"*Q.* Will you read the page in which the wine sent to Mahasoo is written:—

"Witness reads as follows:—Date 26th, month unknown.—Beer, 6 dozen; soda-water, 6 dozen; whisky, 2 bottles; brandy, 2 bottles; sherry, 17 bottles; claret in pints, 10 bottles; sauterne, 3 bottles; maraschino, 6 bottles.

"Another date, month unknown.—Champagne, 4 dozen quarts and 1½ dozen pints.

"Total, 33 dozen of sorts were sent to Mahasoo, but of this only a portion is accounted for here."

Now, gentlemen, though the quantity of articles taken does not of course affect the question of my moral guilt, for I was equally a thief if I stole one as if I stole 100 bottles; yet justice, fair play, judicial practice, and common decency alike require that when details are formally and deliberately specified as part of a criminal accusation, the specification should at least correspond with the data on which it is based, and it is, I submit, altogether unjustifiable that a formidable list of abstracted articles should be presented to this Court, and set forth before the world, to swell the apparent magnitude of the charge, when there is no evidence whatever to substantiate the accuracy of the catalogue.

Now, gentlemen, I ask you to say whether such evidence as this is, in the words of the law, so "distinct and positive as to prove my criminality beyond all reasonable doubt," for this, as I have shown, is necessary before the presumption of innocence is repelled; nay, whether it is evidence at all on the only point on which evidence is necessary.

For what, in a case like this, are the proofs; what the indications of guilty purpose and fraudulent intent? Are not concealment, privacy, precautions against surprise beforehand, devices to suppress the evidence when detection is imminent, cooked accounts, fear, shame, and confusion of face, when suspicion is roused or charges made?

Are any of these indications shown by the evidence adduced? Nay, do not all the incidents

incidents and accidents of the case exhibit every word, every action of mine, in a light diametrically opposite. 6 August 1866.

For, gentlemen, while the evidence shows his Excellency exerting himself for the purpose of eliciting evidence against me; while it discloses members of his Excellency's staff hunting for proofs; writing and telegraphing to Calcutta tradesmen, with a view to the preparation of these charges, I myself have scrupulously avoided holding any, even the slightest communication with any soul, European or native, from the first commencement of the controversy till now. I have met accusation with open and indignant denial; nay, I have given offence by the warmth, perhaps even the defiance, of my manner and language, rather than exhibit any desire to conciliate or conceal.

Gentlemen, I have quoted a legal maxim, as bearing closely and conclusively on the question before you, because the essential rules of evidence are the same in courts martial as in other tribunals. But if this great maxim is found in the cold and unimpassioned pages of the law, where it stands the bulwark of innocence, the protection of the weak against the malice and machinations of the strong, how much more is the principle to be recognised in that still higher code, the unwritten code of honour, which regulates, or ought to regulate, the dealings of gentlemen.

And if this principle is held as it must be, sacred and inviolable, where accused and accuser are strangers to each other, what shall be said when they are united by the ties of devotion on the one hand and confidence on the other?

You have heard, gentlemen, from the lips of Sir William Mansfield himself, that I had for years devoted myself to his interests, and that up to the month of April last he reposed undiminished confidence in me, while in one of the letters filed in this Court he states that, up to a few days of the time at which he was writing, he would have trusted me with his whole fortune; and yet, gentlemen, the malicious and *ex-parte* evidence of a menial servant has been sufficient, in a few hours, to convert confidence into distrust, and recompense devotion by public dishonour.

And this, gentlemen, brings me to another question connected with these charges, which, in justice to myself, I cannot omit to mention.

In the brief narrative with which I commenced this address, I related the proceedings from the day when the first tale was poured by Abbey into his Excellency's ear, up to the second sitting of the Court of Inquiry, on 11th May.

His Excellency, having refused to allow the proceedings and finding of the Court of Inquiry to be produced, I am precluded from making any positive assertion in regard to them. Thus much, however, is clear. No charges have been framed, in connection with the matters investigated by the Court on those two days, and it was only on a further private and *ex-parte* examination of native servants, Abbey and Captain Harbord (my fellow aide-de-camp), conducted by his Excellency himself in his private room, on the morning of 14th, that these additional charges were brought into existence.

I am therefore justified in saying that, although I had been publicly stigmatised in the severest terms of condemnation, dismissed from his Excellency's staff, and turned ignominiously out of his house, in regard to the very matters which formed the subject of investigation on the 10th and 11th, there was evidently nothing which the Court could conscientiously hold as calling for military action or military charge. With reference to this fact, as well as to the mode in which the private examination was held by his Excellency on the 14th May, I respectfully solicit your attention, gentlemen, to the remarks recorded by the members of the court martial, in the case in which Lord Brudenel was prosecutor, and to the General Orders of his Majesty William IV. on the case, which is reported at length in Simmons, at the 264th page of his work on courts martial.

But, gentlemen, although I believe I might, with the utmost confidence, appeal to all the circumstances I have enumerated, the absence of all evidence of guilty intent, the proof by the prosecution itself of all the circumstances which establish innocence; my former character for unimpeached integrity as declared by his Excellency, the questionable character of some, at least, of the witnesses, and the extraordinary nature of the private inquiry held by his Excellency in his room, and, making this appeal, ask confidently for a full and honourable acquittal, without further defence; yet it will be a satisfaction and pleasure to me to offer for your acceptance an explanation of those very simple circumstances which have been so strangely distorted, and have branched out into such strange complications.

I will now, therefore, with your permission, offer a brief statement of the circumstances as they really are, simply asking that where the facts are found to be in accordance with reason, probability, and common sense, and not rebutted by any evidence, I may obtain that ordinary credence which a gentleman has a right to expect.

At the time this controversy first arose, I had the charge of Sir William Mansfield's household establishment; a charge, I need scarcely say, which involved unceasing labour, great responsibility, and an entire sacrifice of my time.

Sir William Mansfield has told you that I "always grasped at everything, and that I had a curious jealousy of anybody else being employed" by him.

I know not whether I deserve this description, and it does not entirely tally with my earnest request, which has been disclosed during the prosecution, to be relieved of the entire charge committed to me, a request which was imperatively ignored; but, however this may be, I certainly did stipulate for plenary authority in all matters under my superintendence; and, while I spared no labour, I held myself, and myself alone, responsible for all details of management. Under this system, I no more dreamed of hesitating to take,

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lend, or use for my own purposes, any of the stores, wines, or other articles of property under my charge, than if the things had been my own, so long as records were kept of the consumption, and the interests of the proprietor were not eventually injured.

In the case of the particular stores which I borrowed for the entertainments at Mahasoo, it was the end of the season; the stores themselves which I had purchased myself in Bombay nearly two years before, were old; a new supply was awaiting his Excellency in Calcutta. The wines I had bought in Simla for the ball which his Excellency gave in September, and though good of their kind, were not such that there would be any difficulty in replacing them. Sir William Mansfield was, at the commencement of the ensuing season, to leave Barnes Court and move into Woodville, where there was little or no godown accommodation, and thus it was on all accounts advisable and advantageous that both stores and wine should be disposed of. The social propensities of my fellow aides-de-camp, and not my own, suggested the entertainments at Mahasoo. Their friends principally, and but few of mine, were the guests invited; his Excellency himself partook of the entertainments.

Can you, gentlemen, conceive that when I borrowed those stores and wines, and had them conveyed in open day and before many witnesses to Mahasoo, I did so with "intent to defraud the Commander in Chief?" Can any one in his senses believe that in these sober and practical days a gentleman could imagine or compass a deed of such barefaced and reckless audacity as that which I am supposed or suspected to have committed, which is more suited to the rude times of Robin Hood or the facetious violence of a Turpin, viz., in open day to steal his Excellency's wine and provisions, make his Excellency's servants carry them to my house, and ask his Excellency himself to partake of them?

And yet this, and nothing less, is the crime charged; for if I took these things with "intent to defraud the Commander in Chief," as laid in the charge, that intent must have been in my mind at the time, the misappropriation was complete when they passed from the store-room of his Excellency, the fraud was perpetrated when they were placed on my table at Mahasoo. Once more, gentlemen, I will ask in all seriousness whether you can believe such a romance as this?

Gentlemen, I will not any longer detain you by dilating on this portion of the subject, but will rather pass on to those minor incidents on which the prosecution seems to have relied as more or less in the absence of all direct evidence, substantiating this extraordinary charge.

The first of these circumstances is to be found in his Excellency's own evidence, where he refers to two notes of mine of the 20th and 24th of April respectively, the one written to himself, the other to Lady Mansfield The contradiction which his Excellency imagined he perceived in these notes excited, as his Excellency deposes, strong suspicion of my truthfulness. This incident seems to have been revived during the latter portion of the prosecution, as new evidence was produced towards its close to show apparently that as certain books had all arrived before 20th April, the statement made in my note of 24th to the address of Lady Mansfield must have been untrue.

A few words, gentlemen, will, I imagine, clearly show you what a fallacy underlies the whole idea.

I will here ask your permission to read the notes in question, and then ask you to decide whether there really is the smallest contradiction or the slightest inconsistency in them.

"My Dear Sir William, "20th April.

"All the house books are complete to date. At any time that you would wish to go over them I shall be happy to attend on you for the purpose. The general statement of accounts you have seen to a recent date; the other shall be completed, and shown to you very shortly.

"There is full work for one clerk in the establishment: I would gladly learn from you that one had been told off for the duty. I could not hold out a hope that Abbey will be able to continue to act as clerk, as well as do his other work. Attention to the one duty can only be given by neglecting the other. The books, which you can see at a moment's notice, will convince you that everything is right.

(signed) "*Scott Jervis.*"

"My dear Lady Mansfield, "24th April.

"I will complete a statement such as you would like to see when the boxes with the accounts, bills, &c., arrive, and let you see it.

"Sir William has not yet spoken to me about the guard-room site.

(signed) "*Scott Jervis.*"

You will here perceive, gentlemen, that on 20th I told his Excellency that the "house books were up to date, and he could see them." Two days after this Lady Mansfield wrote two notes to me, extracts from which I will read:—

Extracts

Extracts from Lady Mansfield's Notes.

"1st Note.—The only book, I believe, which I have still to see for this month is your own, which contains the summary of all expenditure, and which you said you would let me have as soon as it was ready.

"2nd Note.—I am now looking over all my books. Will you be so good as to let me have the one which contains the amount of the total expenditure since you took overcharge last year. Have you seen the site his Excellency fixed on for the guard-room?"

You will, gentlemen, clearly perceive from these notes the distinction which his Excellency in his evidence declared he could not see, viz., the distinction between the house-books which I stated were "up to date," and which Lady Mansfield did see, and the "summary of all expenditure" which Lady Mansfield wished to see, and never yet has seen.

That this "summary" would, when completed, have been contained in a book no one ever questioned, but it was not the book alone, its leaves, and binding, that she required, but the contents which that book was expected to contain, that is to say, the "summary of expenditure," as her Ladyship expresses it, the "statement" of expenditure, as it is designated by me.

To show you, gentlemen, how hopelessly his Excellency failed to perceive this obvious distinction, and thus allowed himself to charge me with untruth, I will here read a portion of his Excellency's evidence on the point. And you, gentlemen, will scarcely fail to perceive the extraordinary fallacy which pervades all his Excellency's answers, and the mental confusion which induces him to repeat again and again that a statement was not required, because, apparently, that statement was to be contained in a book.

Although his Excellency deposed that he "could not very accurately state what the house-books are," he still absolutely condemns me of untruth in saying that I required time for preparing a summary or total of six months' expenditure, as if the two things were identical, adding these extraordinary words: "It is thus apparent that whereas I was told I could see the books (that is, the house-books) at any moment on the 20th, it was said on the 24th April that boxes with accounts, bills, &c., had not come." On this his Excellency remarks (with what show of reason, argument, or logic I leave you to decide), "the discrepancy, therefore, is very clear; there was no reservation in the first note, there was a large one in the second," and thus, although the things mentioned in the two notes were totally different things, house-books in the one, bills and vouchers in the other, his Excellency speaks of them as if they were the same.

Now, at that time there was no book containing a summary of the whole expenditure, such a summary had never been prepared since I took charge. No clerks had been allowed. My own time was entirely engrossed at Simla by the building I was supervising and my other multifarious duties; then came his Excellency's tour and the sojourn in Calcutta, and immediately on my return to Simla the requisition was made. To meet, therefore, Lady Mansfield's wishes, I had to prepare this summary, and for the proper preparation of this, all the bills, vouchers, and other papers, many of which had not yet arrived, were requisite.

Now the prosecution has given evidence—the evidence of Abbey, a chuprassee, and an under-butler—to prove that the account-books, including the "Ledger," had arrived by 16th April. His Excellency, in his evidence, has pointed to the book which he considers to be the "Ledger." But Abbey, when that book was shown to him, declared stoutly that it was not the Ledger, adding that the Ledger is a large book with the name in gilt letters on the back. But both seem to think that the existence or presence of the "Ledger" itself would have enabled me at once, without preparation or delay, to meet Lady Mansfield's wishes.

Gentlemen, I have brought the "Ledger" into Court with me, and when you see it you will recognise the accuracy of the description given by Abbey, and the misapprehension of his Excellency; but at the same time you will perceive that, whether present or absent, the mere book could at that time have afforded but little assistance, for you will see there is not a letter or figure in the book from the first page to the close.

But, supposing the "Ledger" to be the book which his Excellency has described (a book which, in fact, is a mere rough copy of the cash-book), it is equally clear that as this had only been closed to the 30th November, and represented only, as I shall show, a very imperfect account of cash received and expended during those months, the presence of this book could have been of no service to me. The real cash-account book, like the "Ledger," is now in my hands, and, like the "Ledger," it is blank.

The simple explanation of the whole matter which has caused such interminable confusion, is, that while the house, or daily books, viz., the bazar book, sundry book, store book, cellar book, and farm book, had, as I stated in my first note, been regularly kept up to date, no general statement of accounts or summary of expenditure had, for the reasons given, been ever drawn out. To enable me to prepare this, not only the books themselves were required, but many other papers, vouchers, bills, and memoranda, were requisite, and the delay in closing the accounts rendered it a matter of considerable difficulty.

Thus I have, I trust, shown that the supposed contradiction in the two notes is purely imaginary, and that the arrival of the books (though including the much-talked of "Ledger") has no conceivable connexion with the matter.

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Not only vouchers, and other papers, were necessary, but the Calcutta bills, the memoranda of stores and wines used or lent, and all other such materials were indispensable.

Had a little patience, and a small measure of forbearance, been shown towards me at that period, and Abbey's malignant tales ignored, I should have been able to close and prepare the wished-for "summary," for that, gentlemen, was what Lady Mansfield asked for, and in that would have appeared, not only the expenditure, but, I venture to say, the recoveries on account of the provisions and horse-cloths which I took the liberty of using.

The next point which has been raised by the prosecution, apparently with the intention of supporting the idea of dishonesty, is that the cash account for the three months, September, October, and November, shows a balance to the credit of his Excellency, and contains no recoveries, or payments for stores borrowed, so that, as it is (perhaps not very logically) argued, there was no intention to pay or recover, and my assertion that his Excellency is in my debt is incorrect. These apparent anomalies will be fully explained when I come to the question of the accounts generally, and show the system on which they are kept.

The third point which has been mentioned in the prosecutor's address, and brought forward in evidence, is the fact of Captain Harbord having paid me 220 rupees as his share of the Mahasoo expenses.

Like all the other evidence adduced by the prosecution, this fact is, pre-eminently, evidence for the defence. From Captain Harbord's deposition it has been seen that this money was left by him with me for the payment of a Bunneah, that the Bunneah having refused to accept that sum, in payment of a larger claim, I myself wrote and proposed that this sum should be credited to Captain Harbord in the Mahasoo account,

Part of this sum, I may here mention, I have already paid away on Captain Harbord's account, and part I still hold.

If any fact could be conceived more conclusive than another, as to my intention of recovering the value of the stores borrowed, it would be this. I am not, I apprehend, charged with stealing this sum of 220 rupees. Captain Harbord having paid it by cheque, holds in the counter check a receipt for the payment. It was my own proposal that the sum should be devoted to that purpose, and if I failed so to devote it, I should be at any time in Captain Harbord's power, and detection would be inevitable.

But when was this credit to appear. The answer to this is precisely the same as the answer to all the questions, and the solution of the apparent difficulty is the same.

It is simply this: I have, as I have before stated, never made out the accounts at all. I told Lady Mansfield on the 24th April, that I could not do so at the time till other papers arrived. I had after that taken a week's leave of absence, which I was enjoying at Nalderah, when the attack upon me commenced. Abbey's tale had been poured into his Excellency's ears, and I found myself condemned as a criminal.

What followed upon this is well known, and will be again referred to in connection with the second and third charges.

It now only remains to make some observations on the system which, in many instances, as you have seen, gentlemen, admitted of expenditure being in the first instance debited to his Excellency, and subsequently recovered, and credited in the accounts.

The evidence for the prosecution has again in this instance also furnished proof of this practice, and rendered it unnecessary in me to summon the witnesses whom I first named. As an additional proof of the custom, I have now brought another book, ranging from 1861 to 1865, and kept by Colonel Kirby and Major Flood, which shows the long continuation of the practice of supplying mutton for payment, at a considerable profit, sheep being purchased at three rupees, and sold to four or five different officers at about nine rupees, as also allowing the charges for horse-shoeing to run on for months together, the amount due being subsequently and at long intervals recovered from the parties.

The books adduced during the prosecution showed items of sherry, gram, and some other things, besides regular charges for mutton, distributed to officers for payment, the recoveries in some instances not being made till 8, 10, and even 15 months after the meat had been consumed.

In like manner, the Umballa Hotel bill during Captain Christie's charge, in 1865, which I produced, shows the entire bill to have been paid in the first instance from his Excellency's purse, and so entered in the cash account, and the sums separately due from Captains Christie and Harbord subsequently recovered from them, and credited in the same accounts. I have asked the Court to call on his Excellency Sir William Mansfield to produce Lazarus & Company's bill for furniture supplied last cold season in Calcutta, by me, which will, if I remember rightly, show precisely the same system; purchases made by myself and Captain Harbord, having been first entered in the bill with those of his Excellency, and afterwards erased by myself, as will be apparent if his Excellency produces the account. The bill of Mackenzie and Lyall is precisely the same, one of the bronzes and air pillows entered in that account being mine, and in my possession to this day.

I solicit, gentlemen, your particular attention to this system, as so clearly exhibited by these books and bills, because, whether it were carried to a greater or less extent, whether it was brought into play with regard to horse-shoes, mutton, gram, hotel bills, or stores, the principle was the same, and though it was doubtless open to his Excellency

lency to object either to its continuance or extension, it was not, perhaps, quite so legitimate or just to found a charge of fraud or felony against me for acting on it. 6 August 1866.

And I would now wish, gentlemen, to draw your particular attention to the rough cash account which was produced by his Excellency, apparently, as I have before observed, for the twofold purpose of showing, first, that there was a balance to his credit at the close of each of those months; and, secondly, that no recoveries of the wines and stores borrowed by me had been entered in it.

I will ask the favour, gentlemen, of your looking at that book, and, to prevent any confusion arising in consequence of the conflicting ideas which have been promulgated in regard to the difference between the ledger and cash-book, I will take the liberty of stating that that book is not a "ledger," but a rough copy of the cash account, the "ledger" being totally distinct.

Now, gentlemen, to show you that the account in this book is, as I have described it, merely a rough and most imperfect sketch, or outline of account, containing not any accurate statement of receipts and disbursements, but a sort of memorandum for my own information, I will ask you to look at the second item of receipt on the credit side, viz., "Cash by cheque of Commander in Chief on Simla Bank, 2,000 rupees."

Now this is entered as received on the 1st September.

But, gentlemen, I here show you a memorandum sent me at my request, by Sir W. Mansfield, and signed by Major Flood, of all the cheques received by me from his Excellency since I took charge of his establishment on the 1st of September, and you will perceive that no cheque whatever was given in September, the first having been drawn on the 3rd of October, so that it is clear that this entry is not an actual receipt, and is put down, not because it was received, but because, had his Excellency paid punctually, which he never did, it ought to have been received at the beginning of the month, 2,000 rupees being the sum regularly allowed for the monthly expenditure.

Again, you will perceive, gentlemen, that there is no expenditure whatever in September, a sufficient proof that this does not even profess to be a correct, or in any sense a complete, account, the September payments being entered in October, subject to future distribution when the fair account was drawn up.

Further, I beg to point out to you, gentlemen, that the item of 2,000 rupees entered in the account for October, as received on the 13th of that month, is also an inaccurate entry; the cheque drawn on that day by his Excellency was for 3,000 rupees, 2,000 rupees of which was on account of the new house that I was building, and 1,000 rupees only on account of household expenditure.

Thus, again it is evident that 2,000 rupees was entered, because that was the usual sum allowed, although 1,000 rupees only had been actually received on account of household expenses.

In November no payment whatever was made by his Excellency.

And thus, even by the account contained in this book, instead of a credit at the end of November of 200 rupees, if the 1,000 rupees, erroneously credited, be deducted, there would be a debit of at least 800 rupees due to me.

The first conclusion, then, which the prosecution has asked the Court to draw from this account book, viz., that there was always a credit to his Excellency during the three months to which it refers, is clearly erroneous, such credit being merely nominal, arising from the incompleteness and imperfection of the account itself, which, as I have before stated, was a rough copy only, the complete account never having been made out, as is apparent from the blank cash book itself.

And, in connexion with this point, there is a remarkable statement made by his Excellency in his evidence, well worthy of your most careful and grave consideration.

It is as follows:—*Q.* "Is your Excellency aware that the money actually paid was all my own money, your Excellency's account having been overdrawn?—*A.* I am not aware of anything of the sort, and I cannot believe that my account was overdrawn, because, so far as I have ever seen my accounts, there has been invariably a credit at the beginning of every month. Three or four days before the prisoner's journey began he received from me the sum of 4,000 rupees, namely, 2,000 rupees for current expenditure, that is, for the current month of March, and 2,000 rupees for the purpose of discharging some eight or ten bills of which he showed me a list. I was about to write out cheques for those bills, when he proposed to me to give him the whole sum, and that he would go round and pay them and save me the trouble. I have gone into this detail to show that the prisoner received from me the money he asked for, and as, has been stated before in my evidence, I believe a credit and debit account has never been permitted between my staff officers and myself."

Gentlemen, I here produce the counter cheques for those identical items, from the dates of which it will be seen that I had paid them all out of my own funds, some one, some two, and some three months, and one in Bombay seven months before the day on which his Excellency states that this conversation took place.

I leave you to judge, gentlemen, whether it is conceivable—whether it is possible that after all those bills had been paid by me out of my own private purse, some months before, I could have proposed going round to pay them myself, as stated by his Excellency. It is not for me, to recriminate, but when it is remembered that his Excellency publicly dishonoured me by charging me in the presence of this Court, and of the public, with positive untruth, for an apparent inconsistency in two notes, which has now been shown to be no inconsistency at all, it may be easily conjectured how he, at least, would have described

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described such a statement as this, if it had been made by me, instead of by himself, in the course of a deposition on oath: the conversation that really took place was, that I told him I had paid the bills, and his answer was, "Why you must have paid them out of your own money."

It will thus be seen that his Excellency's account was constantly overdrawn; on the occasion I have last mentioned to the extent of nearly 2,000 rupees.

In regard to the second point which the prosecution has pressed in connection with this particular book, viz., that no recovery of the wine and stores, borrowed for the Mahasoo pic-nics, appear in it, I have already shown that recoveries are not and cannot be entered before they are made. To make and enter such recoveries is a work of time; the exact quantity taken, the fair value to be put upon each article, the portion to be paid by me and others, all these calculations and references were necessary, before the account of recoveries could be made. To me, engrossed as I was with incessant occupation, the task at that time, in the absence a clerk, would have been most difficult, in fact impossible; that I intended to effect recoveries is obvious, from my proposing to Captain Harbord that his 220 rupees should be kept for that purpose—and my crime is that I allowed the adjustment to be delayed.

But, gentlemen, if I had frequently paid large sums for his Excellency out of my own resources, never even hesitating to do so, when the delay in his Excellency's payments rendered it necessary, I certainly did not think, even looking at it as a mere matter of business, that I was committing any very heinous offence in suffering his Excellency to give me credit, for a few months, for a few hundred rupees.

I would here also remind you, gentlemen, of the length of time which you have seen was constantly suffered to elapse before the value of the joints of mutton sold by his Excellency to Colonel Stock, Major Flood, Dr. Hadaway, and Colonel Phayre, were realised and credited in the former accounts; and to remind you that on any day previous to such recoveries a charge of malversation might have been brought against the manager of the establishment, on precisely the same grounds as those on which I am now arraigned; all that would have been necessary being that delay in recovery and re-credit should be distorted by distrust and suspicion into intent to defraud the Commander in Chief.

In fact, nothing but bare suspicion, suspicion unwarranted by my former character, and by any of the circumstances under which these things were used—nothing but suspicion of the most insulting and ungenerous character, can possibly justify any other conclusion than that which I have throughout offered. Indeed it comes to this—the whole labour, anxiety, and responsibility of his Excellency's entire establishment is on my shoulders; by my management his Excellency is enabled to defray his expenses, monthly, on a sum which no one can consider aught but moderate.

I myself constantly advanced on his Excellency's account large sums of my own. The system, as his Excellency has himself described it, is one of "entire confidence," and yet, when, in reliance on such confidence, I borrow a few hundred rupees' worth of old stores, for open and public purposes, I am publicly charged with stealing them, before I am allowed to offer explanation or to close the accounts. His Excellency at the very time I borrowed them, and from that time to this, being largely in my debt! and the sole ground of my accusation being suspicion.

You must not, also, gentlemen, overlook the fact that the preparation, writing, and examining of these accounts was not my business, but the business of a clerk or clerks, his Excellency has himself stated in his deposition that in Bombay he made use of the Government clerks for this duty, but none were entertained here.

I read the questions and answers on this head:—*Q.* "Did your Excellency keep any private clerks in your own pay to assist me in the preparation of accounts during that period, or any, and what portion of it?—*A.* No; the custom of the house was, as transmitted from my predecessor, Sir H. Somerset, that a clerk in the Military Secretary's office assisted the officer in charge of the household as a writer in this matter; the prisoner must have had some assistance, as his predecessors.

Q. "Has your Excellency kept any clerks since I took charge on the 1st September; and what assistance have I had?—*A.* I recollect that about that date there was some talk about the clerk who was retained for the purpose of writing for the officer in charge, being too young for his office. I am tolerably sure that I told prisoner to provide himself with as good a writer as could be found at my expense: I certainly did so to his predecessor in charge: if, therefore, he was in want of due assistance, it was his own fault. I really don't know, but I believe this young clerk was discharged in Simla: in point of fact, I don't know any officer of my acquaintance who is so independent of a clerk as the prisoner."

1st Charge, 2nd Instance.

With regard to the second instance of the first charge, it will only be necessary to point to the curious circumstance, that no evidence whatever has been produced even to establish the fact. All that the Khansamah has been able to state on this subject being that I paid the bills presented by him, whether on his Excellency's account or my own by cheques, and that when I gave him the first cheque I told him that I paid it out of my own money, his Excellency's accounts being overdrawn; and though the charge specifies a particular entry made in a particlar book, neither the book is produced nor the entry shown!

The charge, therefore, is utterly unsupported, and to show what little justification there was for making it, I am about to show the Court the Khansamah's bazaar account for his Excellency's expenses, as well as the Khansamah's bazaar account for my own expenses

at

at Mahasoo, each drawn out separately, with a memorandum of mine written at the time they were presented and paid. 6 August 1866.

I submit, gentlemen, that this charge has not and could not have had, at the time it was framed, even a shadow of justification, and leave you to say whether it was fair or right, that it should ever have been brought forward at all.

In regard to the 4th Instance, I admit, and I have never wished for a moment to deny, that I authorised the entry of the travelling expenses for myself and Abbey from Calcutta to Simla in the book of "Bazaar expenses," but that I did so "with intent to defraud the Commander in Chief," or with any wrong or dishonest intent at all, I need scarcely say I take the liberty of denying. The story is simply this: Abbey travelled at his Excellency's expense, and in company with me: as a matter of convenience I made over the purse to him, and he kept the accounts. Some of the charges being mixed up together, it would have been extremely difficult in the hurry of travelling to separate them at the time; precisely, therefore, as in 1865, the Umballa Hotel bill was all paid out of his Excellency's purse, and the shares of the aides-de-camp subsequently recovered and credited, in the same manner I allowed the several small bills to be paid by Abbey in the first instance, subject to adjustment and recovery when the accounts should be made up. 4th Instance.

Meanwhile, on our arrival at Simla, for the purpose of preserving the record of those charges, I authorised their intermediate entry in the bazaar expenses book, considering that the most appropriate place for charges of eating and drinking to be entered. This is the simple fact. I now proceed to consider the evidence given by Abbey on the point.

Perceiving that the mere fact of the temporary entry of these items in the book could not possibly support the charge of which he seems himself to have been the principal instigator, the witness has sworn to the destruction of the bills, which formed the vouchers for those entries, explained the nature of the charges, and would of course have enabled me, when I drew out the general statement of the accounts, to debit myself with the amount due from me. Whether Abbey's evidence is worthy of credit, I leave, gentlemen, to you to decide. That he contradicted himself again and again is patent on the face of his deposition. His account before the Court of the destruction of the bills, differs, as you will probably have observed at the time, "toto cœlo" from the account given to his Excellency at the private examination of the 14th May, while his statement regarding the purport of his letter to Mrs. Bain, is shown by Mrs. Bain's answer to have been unquestionably false.

Looking then at the palpable contradictions of this man's evidence, his obviously hostile animus against myself, displayed in every tone and gesture while under his examination, his boastful declaration that he was "first and foremost" in bringing these things to Lady Mansfield's notice, and the fact, now so notorious, of his from the first having been the prime accuser (whether of his own motion, or at the instigation of others, I do not stay to ask), looking at these things, gentlemen, you will not, I imagine, have much difficulty in gauging the value of this man's testimony, and will not perhaps be disposed to give him entire credence when he states, or rather implies—for he was afraid, apparently, to say so distinctly—that he tore up these bills with my authority.

To destroy such bills and vouchers was in direct opposition to the practice of years, and I can only assert, solemnly, that I never gave either permission or order, and never witnessed the destruction.

But although this witness, evidently for the purpose of supporting the imputation of "concealment," specially charged against me by his Excellency in his evidence, has ventured upon this disjointed tale, a few moments consideration will show the shallowness of the conception. The entries, as they appear in the book, are entirely devoid of detail; the total amounts are correctly given, and the dates are accurate. It was notorious that we were travelling on those dates, and that the book was in my possession.

Thus, a glance at those itemless entries and dates would show anyone that they indicated the travelling expenses, and nothing else; and this supposed attempt at concealment, if such it was, will be seen to be the most childish and bungling device that was ever imagined, and not exactly that which a gentleman with that "special aptitude for business" which his Excellency has so frequently alluded to, would be disposed to adopt for the purpose of concealing a fraud.

But, gentlemen, if you are disposed to imagine that I perpetrated this elaborate and disgraceful trick for the sake of a few rupees, can you believe that I would have admitted a man like Abbey into my confidence, and thus placed my name, my prospects, and my liberty, in his keeping. Have you, gentlemen, in your experience, ever heard of such an act, or can you imagine it being committed by any one who had possession of his senses? Can you venture, in this case, to presume my guilt, when the same simple explanation affords a solution of this, as of all the other, apparent difficulties.

Precisely, I repeat, as the charges of Captains Christie and Harbord were entered in the Umballa bill of 1865, paid with his Excellency's money, and afterwards recovered, in the same manner, were these charges (so mixed at the time that they could not have been separately paid without trouble and delay) defrayed by Abbey out of his Excellency's purse, entered for the time, in the most appropriate and convenient book, to await adjustment when I prepared and closed the accounts.

With regard to the horse-gear borrowed by me, under the same circumstances and with the same intent, I have only to point out that, precisely as in the case of the stores, these 3rd Instance.

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things were openly taken, the duffadar being ordered to give them out of the supply which I purchased, and kept in store. The bill, gentlemen, as you are aware, had never been sent in when this Court was assembled, and even if it had, the debit and recovery of the value could not have been effected until the accounts were made up.

Here, then, again, if ungenerous suspicion is to take the place of proof, if, because I took and used these things without an attempt at concealment, therefore I stole them, though the taking was open and undisguised, if in this instance also guilt is, in the absence of all proof, to be presumed, then, gentlemen, I may be pronounced guilty, and not of misappropriation only, but of madness.

But, gentlemen, there is one other point to which I much wish to refer, and which may be of some assistance to you in arriving at a conclusion on this point.

It will have been I fancy apparent to you from the facts elicited by the evidence, that though the actual storm broke over my head only on the 1st May, its mutterings were distinctly audible some days before.

The memorandum indited by his Excellency, and which, though ostensibly addressed to all the members of the personal staff, was in fact, as his Excellency himself stated, directed solely against me; the exposure which that memorandum contained of my smaller defects and more venial peccadillos, the injunction to pay more frequent visits, and qualify myself to entertain the visitors, the prohibition against retiring to bed before the rest of the party, and the significant allusion to what is called "cutting ladies and gentlemen;" the complaints regarding the insufficiency of horse clothing, the call for my accounts, and many other trifling incidents not necessary to enumerate, were more than sufficient to show me that the atmosphere was clouded, and to warn me to set my house in order.

The first of May saw the first bolt fall; the confidential slanders of Abbey, and the charges brought forward by his Excellency, the refusal to accept my denial, and my dismissal from the staff, followed in rapid succession; and I had, by the 5th of that month, seen clearly the position I was in, and what little consideration I might expect.

All that time the book which his Excellency has called a "Ledger," and which I have shown in reality to be a rough copy of the cash-book, was in my possession. His Excellency has again and again stated that if recoveries had appeared in that book, the fact would prove the absence of all guilty intention.

May I not ask then, gentlemen, when I saw such an obvious determination to bring matters of accusation against me, if I had really been conscious of having misappropriated these eatables, what was there to prevent me, with a few strokes of the pen, from adding at the foot of that very account, in November or in the succeeding month, recoveries on account of these things, and thereby at once concealing my peculation for all future time, and preventing either accusation or scandal; nothing could have been more simple, more easy of accomplishment, and more conclusive; the book was in my own keeping, the accounts were in my own hand, there was no one conceivable difficulty, and no conceivable objection or cavil could have been made to the entry.

And so again with the Third Instance, Monteith's bill not having been sent in, a line or message would have been sufficient to have the few horse cloths which I had taken charged in a separate account, when that charge also would have been impossible.

I ask you, gentlemen, whether a guilty man would have neglected so ordinary a precaution as this, when honour, name, reputation, and all that is valuable in life was at stake.

I ask you whether the absence of any such attempt on my part does not afford irrefragable proof of my innocence.

2nd Charge. With having at Simla, on the 14th of May 1866, neglected to obey the orders of his Excellency the Commander in Chief, communicated to him through the Adjutant General's Department, to produce before a Military Court of Inquiry ordered to investigate the accusations in the 1st and 4th Instances, of the first charge, certain books, accounts and vouchers, the property of the Commander in Chief, in his, Captain Jervis's possession, the production of which was essential to the clearance of his character as an officer and a gentleman.

If this charge is carefully compared with the facts, as elicited by the evidence, I do not think, gentlemen, you will find that it has been in the least degree substantiated, certainly not to such an extent as to constitute a military offence. The facts, gentlemen, are these: On the first and second sittings of the Court of Inquiry I attended the Court, which was engaged throughout those days in investigating the charges connected with the Mahasoo farm, charges, which, as I have before pointed out, appear to have resulted in nothing.

But though I attended, I declined, in the absence of my counsel, to take any part in the proceedings, a privilege which is distinctly conceded to me by the law.

On the 14th May, I received a letter from the Adjutant General informing me that the Court of Inquiry would re-assemble at 12 o'clock, and "requesting" me to attend at that hour with all the account books, papers, &c., in my possession belonging to his Excellency.

I would, gentlemen, first direct your attention to this letter, when compared with the charge. The charge specifies "neglect to obey an order," and the letter, supposed to contain that "order," specifies no "order" at all, but simply a request.

I submit that this discrepancy on so important a point is fatal to the charge, which all military law requires to be accurate and specific; and in support of this plea I would take the liberty of pointing out that on the 12th of June the Adjutant General again addressed me, and "invited" me to attend the Court of Inquiry, which had been ordered for the fourth time to re-assemble for the purpose of considering certain additional charges. In reply

reply to that letter, I "declined" to accept the invitation, and my so doing has never been imputed to me even as an incivility, much less as an offence. 7 August 1866.

How then my neglecting to comply with a "request" which I submit is synonymous with an "invitation," can be converted into the military offence of "neglecting to obey an order," I am unable to understand. I submit this point, gentlemen, to your serious attention.

But, gentlemen, I do not rest solely upon this defence; I can, I apprehend, show that on many other grounds the charge cannot be sustained.

The charge accuses me of neglecting to "obey an order" to produce certain books, accounts, and vouchers.

I have already informed you, gentlemen, and it is a point which will not be disputed, that I declined taking part in the proceedings of the Court of Inquiry from the first. If the law allows me to do this, how can I be required to produce papers and accounts connected with those proceedings? Would not this nullify the privilege distinctly allowed by the law? Would not this production of papers involve the taking of a part in the proceedings, and thus convert the privilege into a mockery, and make my position more dangerous than before? and, if this be so, how can it be charged against me as a military offence, that I neglected to do what the law itself distinctly permits me to decline doing?

Again the charge sets forth that the production of these "certain books, accounts, and vouchers, was essential to the clearance of his character as an officer and gentleman."

But, the letter requesting me to attend the Court gave me no hint or intimation whatever of any new charges affecting my character as an officer and a gentleman, having been preferred or prepared! nor did it tell me that these "books, accounts, &c." were necessary for the clearance of my character from such charges. How then was it possible that I should know or believe this? I had up to that time never heard, and certainly never dreamed, of the 1st and 4th instances of the first charge, or of the first charge at all! a charge which, as you have seen, gentlemen, only came into existence during the private examination on the 14th, and which I first heard after the assembly of the Court.

How, then, can the charge contain such a specification as this? how could I tell that these charges were to be investigated. How could I imagine that the books, &c. were necessary to the clearance of my character, in regard to the charges of which I had no knowledge?

Thus, gentlemen, you will perceive that the charge, as laid, breaks down on examination, in every part and every clause! And I might, if I did not wish to meet all the accusations by a substantive defence, safely claim, gentlemen, an acquittal without further argument.

But though I had received only a request and might, therefore, have been fully justified in declining to comply with it, though having declined to take any part in the proceedings, I might have legally refused to produce any papers at all; nevertheless at the request of the President I left the Court, and produced the only book that contained any account, and explained to him that his Excellency himself had, as it is now shown he had, all the other account books of any importance connected with the matter under inquiry.

The only books in my possession were those which I have this day produced, and the other papers, memoranda, &c. being, as I told Colonel Stewart, mixed up with my own papers, and not at that time in a fit state to be produced at all.

Thus, then, gentlemen, I submit that this charge cannot under any circumstances be sustained, either in its letter or its substance, and when to this is added the fact that in consequence of the cruel treatment which I had previously received at his Excellency's hands, on the mere unsupported and malicious statements of a servant, I was in a state of serious apprehension and distress, amounting almost to terror, and believed from what had already occurred, that my condemnation was a foregone conclusion; when, gentlemen, you carefully review the whole of these circumstances, I can hardly doubt what your conclusions will be.

I now arrive at the Third Charge, which is thus worded—

"*Third Charge.*—With having at Simla, on the 22nd day of May 1866, neglected to obey the order of his Excellency the Commander in Chief, communicated to him by the Military Secretary, to attend a committee of audit which had been assembled by order of his Excellency, for the purpose of testing the accounts kept by Captain Jervis on behalf of the Commander in Chief, the said committee having been ordered for the purpose of affording Captain Jervis an opportunity of relieving himself from the imputations on his character as an officer and a gentleman, contained in the 1st and 4th instances of the 1st Charge, with which he, Captain Jervis, had been made acquainted at a Court of Inquiry held on the 14th May 1866."

The facts connected with the third charge are somewhat different.

"Neglect to obey an order" is here again repeated, and the date on which the offence was committed is said to be the 22nd of May.

And yet the only "order" received that day was, as in the case of the Court of Inquiry, a "request" from Major Flood that I would "have the goodness" to attend the committee on that date!

The only "order" issued on the subject is to be found in the "memorandum by the Commander in Chief" of the 14th May, and is contained in the words of the 5th paragraph. "He now again receives the military order of his Excellency to surrender all books,

7 August 1866. papers, letters, bills and receipts, which purport to have regard to his Excellency's accounts."

This memorandum was forwarded to me on the 15th, and on the same day I received another letter from the military secretary, warning me that the committee appointed to audit his Excellency's accounts had "assumed, to a certain extent, the form of an inquiry into my conduct," or was in fact a "Court of Inquiry" under a different name.

Under these circumstances, gentlemen, I apprehend I should have been fully justified in maintaining the privilege allowed me by law, and which I had already at the Court of Inquiry expressed my wish to maintain, viz., the privilege of taking no part in the proceedings, and consequently of declining to produce any papers or documents which I held as proofs of my innocence. But this I did not do; I attended the committee of audit on the 16th, and presented my building account, which was then and there carefully examined, and I handed to the committee a list of the books which were in Sir William Mansfield's possession, which I required to enable me to complete his Excellency's accounts for presentation to them. No exception whatever was taken by the committee at the time, to anything I then said or did, nor any imputation brought against me, either of recusancy or neglect, the sittings were postponed "*sine die*," and I was told that when I was again wanted, I should receive due intimation.

On the 21st I received notice that the committee would re-assemble on that date, but as my counsel, who had intermediately returned from Lahore, had on that very day addressed a letter to his Excellency asking for a private interview on my behalf, I requested the committee to postpone its sitting. This request was complied with, the sitting of the committee was postponed, but on the 22nd another note was received from Major Flood, calling on me to attend. But on that very date Mr. Tayler had addressed to his Excellency, an earnest and respectful remonstrance, praying for a re-consideration of the orders regarding my attendance before the committee of audit.

Major Flood's letter made no allusion whatever to this letter of Mr. Tayler's, and I therefore concluded that he had written either without the knowledge of his Excellency, or, at all events, without ascertaining what the decision of his Excellency was on Mr. Tayler's remonstrance. And under this impression, I considered that I was fully warranted in awaiting that decision.

And this, from Major Flood's evidence, appears to have been in reality the case, for though pressed in cross-examination on the point, you will perceive, gentlemen, that he gave no satisfactory solution as to whether, when he wrote his letter of the 22nd, calling on me to attend, he had ascertained the orders of his Excellency, on Mr. Tayler's remonstrance. The evidence I now read, and you will see, gentlemen, how the witness throughout avoided giving a direct answer to this simple but most important question.

Q. Does not this correspondence show, that at the very time "I neglected to attend the committee," I had respectfully and deferentially laid the whole question before his Excellency for consideration?——

> "*Prosecutor.*] The letter of the 23rd May is widely apart from the matter before the Court, and the date is subsequent to that of the charges brought against the prisoner, and it has been read at request of the prisoner, when objected to by the prosecution."

"*A.* It appears to me from this correspondence that the prisoner's application was subsequent to his non-attendance at my committee.

"*Q.* Did not Mr. Tayler's letter of the 22nd state that an explanation would be sent the next day?—*A.* Yes.

"*Q.* As you had several times postponed your sitting, and for far less important reasons, what prevented your postponing it again, when I told you I had referred the matter to his Excellency?—*A.* It was his Excellency's order that no further delay should take place; I communicated that order to the prisoner.

"*Q.* Was that order given in ignorance of the remonstrance made, both by Mr. Tayler and myself, or after reading the remonstrances?—*A.* It was after receipt of Mr. Tayler's first letter of 21st May.

"*Q.* Kindly answer the last question distinctly?—*A.* I have no further answer to make; I submit to the Court that I have answered it very distinctly.

> "*Prisoner.*] I submit to the Court that it is no answer to the question."

"*Q.* Did you not consider it would have been fair, both to his Excellency and myself, to have postponed the sitting for half-an-hour, till you could ascertain the pleasure of his Excellency with reference to two such formal and earnest remonstrances as had been made?—*A.* I beg to submit that I am here to state facts and not opinions.

"*Q.* I asked you as a fact, whether you did not at the time so consider, not what your opinion is now?—*A.* I did adjourn the committee on the 21st May, after receiving Mr. Tayler's letter, which will be seen in the correspondence just read. On the 22nd I communicated the Commander in Chief's orders, that no further delay should take place."

Thus then, gentlemen, the offence committed by me on the 22nd was not any wilful or insubordinate neglect or disregard of any "order" of his Excellency's, the only "order" issued having, as I have shown, been already obeyed, but the declining to comply with a "request"

"request" of Major Flood's to attend on one particular day of the sittings of the committee; and why? Simply because the whole question had been submitted for Sir William Mansfield's re-consideration, accompanied with explanations, which I truly and conscientiously believed would disabuse his Excellency's mind of many false impressions, induce him to spare me the insult and humiliation involved in compelling me to prepare his accounts under the surveillance of officers who were instructed to watch everything I said or did, to be used in evidence against me hereafter. 7 August 1866.

That this was a crime, gentlemen, either in a military or any other sense, I can scarcely believe, and to show the exact circumstances under which I considered myself justified in declining to attend on that particular day, "until his Excellency had re-considered the question." I will ask your permission once more to read the whole correspondence on the subject.

Before I do so, however, I would remind you, gentlemen, that though this charge sets forth that the committee had been assembled for the purpose of inquiring into the 1st and 4th charges, Major Flood distinctly stated on oath that the said committee had nothing to do with those charges.

From *W. Tayler*, Esq. to *Major Flood*, Military Secretary to his Excellency Sir W. Mansfield.

"Sir,

"Having been applied to by Captain Jervis to render him my professional assistance in the painful matters in which he is implicated, I take the liberty of asking whether, before any further action is taken in the case, his Excellency Sir W. Mansfield would have any objection to allow me the honour of a personal interview with him, with a view to the discussion of one or two points which it is possible may not have suggested themselves to his Excellency or his advisers.

"My principal reasons for asking this is, because I apprehend from sundry expressions used by his Excellency in the correspondence, Sir William himself regards the sudden disruption of relations with a young officer who has so long been a member of his family and enjoyed his confidence for so many years, with feelings of personal regret, if not of pain; and because it appears to me that explanations offered by a third party, not suffering, as Captain Jervis is, under feelings which, from their intensity, are calculated to interfere and have interfered with his better judgment, might be found sufficiently satisfactory to remove many of the grounds on which his Excellency has found cause of such displeasure.

"In offering this suggestion on behalf of Captain Jervis, who is suffering under the most agonising feelings which an officer and a gentleman has ever experienced, I feel sure his Excellency will appreciate the earnest desire which actuates me, to pave the way, if not for the restoration of Captain Jervis to the favour and confidence of his Excellency, at all events to the removal of those causes which have, in his Excellency's mind, created such grave suspicions against him.

"Captain Jervis now perceives with regret that in his anxious desire to avoid, during the necessary absence of his counsel, any admission or statement which might, in the critical position in which he had been placed, be held to be prejudicial to him, or become liable to misapprehension, he has just given cause for the damaging imputation that he wished to avoid all explanation whtaever.

"He is fully conscious of the military offence which he unfortunately committed in absenting himself from the Court at which he had been ordered to attend, an offence for which he is ready and anxious to submit a full and sincere apology, in any form his Excellency may direct; and he is now prepared to submit a full explanation of every point on which his conduct has been called into question, and at the same time, to answer any questions, and furnish any information that may be required of him.

"With this view I should be thankful if I could be favoured with a copy of the proceedings of the late Court of Inquiry.

"In conclusion, I would wish to state that Captain Jervis would be much gratified if he might be allowed to make up the accounts called for from him, at his own residence, instead of in the presence of the committee, and for this purpose be permitted the use of the books necessary to enable him to do so. The accounts all refer to his Excellency's private expenditure, and do not include any items of public disbursement, and Captain Jervis respectfully and earnestly submits for his Excellency's consideration, whether, in the absence of any *primâ facie* ground to presuppose inaccuracy, he might not be spared the humiliation which is implied by compelling him to prepare his own accounts under the surveillance of a military committee.

"I have, &c.

"Kennedy House, 21 May 1866." (signed) "*William Tayler.*"

"Sir, "Yates Place, Simla, 21 May, 1866.

"In reply to your letter of this day's date, I am directed to say that the Commander in Chief will of course be very glad to receive your visit, and will be at home at his place at Mahasoo, to-morrow. He begs, however, that you will understand that Captain Jervis is now under arrest for conduct affecting his character as an officer and a gentleman, for

7 August 1866. which he is liable to be tried; and, further, that the Commander in Chief has reserved to himself the right of proceeding against him on criminal charges if he is not satisfied with the result of the audit now being carried on by my committee.

"I must inform you that that committee, having been assembled under military orders, for the purpose of enabling Captain Jervis to relieve himself of the imputations under which he labours, cannot be adjourned with regard to the terms under which Captain Jervis was placed in arrest. Further, any account prepared by that officer must be searchingly audited according to its vouchers, before it can be accepted. Consequently, as we wish, under the Commander in Chief's orders, to give Captain Jervis every possible assistance, it would save an infinity of time, and possibly great danger to himself, if he would come with all his books and vouchers, in compliance with the orders given by his Excellency, and then assist the committee to make up a sheet, instead of preparing one alone, which, as aforesaid, must be questioned in every item.

"Having said thus much, I am to inform you, on his Excellency's part, that your visit to him must be held to be one of a private character from one gentleman to another, which cannot be made use of in any way except with the entire consent of both parties. It must further be understood that you do not come as being delegated by Captain Jervis, it being quite impossible for his Excellency to receive any communication from that officer, except through the Courts, whatever they may be, which are ordered to inquire into his conduct. You will understand, that this in no way expresses condemnation of Captain Jervis, but that it is a simple matter of business; that when an officer has behaved with great contumacy, amounting to disobedience of orders, and further stands accused of offences involving his character as an officer and a gentleman, he having been placed under arrest for the same, it would be contrary to military practice to receive messages from him, except through a military channel, as it would also be improper for the Commander in Chief, in any manner, to anticipate the award of a Committee of Inquiry or a court martial.

"I have, &c.
(signed) "*Fred. Flood*, Major,
"Military Secretary."

"To W. Tayler, Esq."

"Sir, "Simla, 22nd May, 1866.

"I HAVE the honour to acknowledge the receipt of your letter of yesterday's date.

"I beg you will return my best thanks to his Excellency for his courteous reply to my suggestion regarding a personal interview, but, under the restrictions laid down by his Excellency, I fear I should only be causing him unnecessary trouble by availing myself of the permission.

"With regard to Captain Jervis's attendance at the committee, for the purpose of assisting in the auditing of Sir W. Mansfeld's private accounts, Captain Jervis, for the reasons stated at length in a memorandum which will be submitted in the course of to-morrow, does not feel himself justified, at all events until those reasons have been considered by his Excellency, in taking a step which would involve an admission, which he cannot conscientiously make, that the discharge of the duties allotted to him by his Excellency, in the management of his private household, form any part of his military duty as an officer in Her Majesty's service, or in any way subjects him to liability in his military capacity, until at least some misfeasance is proved against him in a civil court.

"Captain Jervis wishes to take this opportunity, however, of submitting a humble and sincere apology for having, under feelings which it is difficult to describe, but with which he believes his Excellency will sympathise, committed a breach of military discipline, in absenting himself from the Court of Inquiry.

"He throws himself in this matter on the indulgence of his Excellency, and humbly trusts that, in consideration of the sudden shock which was occasioned by the dishonouring and unexpected charges brought against him without previous notice, and he submits, without any evidence whatever, this hasty act, which he now sincerely regrets, may be graciously condoned.

(signed) "*W. Tayler.*"

"My dear Jervis, "22nd May, 1866.

"THE Commander in Chief having directed that you are to furnish your accounts to my committee, forbids any further delay taking place; I am therefore to request that you will have the goodness to come to my quarters this day at half-past 11 o'clock for that purpose.

"Truly yours,
(signed) "*Fred. Flood.*"

"Dear

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"Dear Flood,

"All Sir William's private accounts I could prepare, I have given him. If his Excellency will give me the books I asked for I shall be obliged to him, as I can then complete the rest.

"My counsel is in communication with Sir William; pending his Excellency's decision on this communication, I do not desire to attend your military court for the purpose of laying before it Sir William Mansfield's private accounts.

"22/5/66." (signed) "*Scott Jervis.*"

"My dear Jervis, "22nd May 1866.

"The committee of which I am president has, as you are aware, been ordered by the Commander in Chief for the purpose of auditing his private accounts. Therefore the notice I sent to you this morning to attend is carrying out his Excellency's orders.

"I may inform you that the Commander in Chief has distinctly declined seeing Mr. Tayler in the capacity of your counsel, it being quite impossible for an officer under arrest to communicate with his military superiors by such a channel.

"Truly yours,
(signed) "*Fred. Flood.*"

"The committee has assembled and is awaiting your attendance."

"Dear Flood

"The communication I refer to is by letter, and can, of course, be forwarded through whatever channel Sir William may direct. Under the restrictions laid down in your letter to Mr. Tayler, the interview so graciously granted by Sir William has been declined under the impression that it would engage his Excellency's time to no purpose.

"Very truly yours,
"Simla, 22/5/1866." (signed) "*Scott Jervis.*"

Memorandum submitted by Mr. *Tayler.*

"23 May 1866.

"The reasons which induced Captain Jervis to decline (at least until the whole question is reconsidered by his Excellency) attending the committee now sitting to audit Sir William Mansfield's private accounts, necessarily embrace the whole circumstances of the case.

"A brief summary of the facts is therefore herewith submitted.

"The charges first brought against Captain Jervis, as contained in the minute of his Excellency Sir William Mansfield, were based upon the evidence of a domestic servant: that evidence was taken in the absence, and without the knowledge of Captain Jervis, and contains in itself such remarkable inconsistencies as in reality to prove nothing.

"His Excellency's minute of the 1st May 1866, presented two alternatives, viz.:

"'If Captain Jervis admits the truth of the butler's allegations, there is nothing more to be done; if, on the other hand, he does not admit the truth of them, he will appear before a Court of Inquiry, consisting of Major Flood and Major Gordon, and shake the evidence against him as well as he can.'

"In a subsequent minute his Excellency records:—

"'Under these circumstances his Excellency has no hesitation in saying that Captain Jervis must cease to be on his staff forthwith."

"Now, although Captain Jervis had not by any means admitted the facts stated by the witness Abbey, in the sense of acknowledging any culpability whatever on his own part but had only admitted by implication bare facts, which involved culpability or otherwise, according to the concomitant circumstances, and the sense in which they were interpreted; yet, as his Excellency based his apparently final decision on this so-called admission, and acted upon it by summarily dismissing Captain Jervis from his staff, Captain Jervis did not suppose, and could not suppose, that he was entitled to or could demand a Court of Inquiry after such decision had been passed, especially as his Excellency had distinctly stated that 'nothing more was to be done.'

"This is referred to, because the fact of Captain Jervis not having applied for a Court of Inquiry has been considered as a fact damaging to his character.

"A Court of Inquiry was, however, summoned some days after the minutes cited above, in which his Excellency had passed his final decision in the case.

"At this inquiry Captain Jervis attended, but declined, as he believed himself entitled to do, to say anything in the absence of his counsel, and submitted a request that the inquiry might be postponed for a few days, until his return.

"Captain Jervis's reason for thus declining was simply a matter of prudence, arising from the peculiar circumstances of the case.

"His Excellency had refused, in the first instance, to see or hear him. He had been condemned unheard, on *ex parte* evidence of a single witness, his Excellency's personal

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servant. A letter, emphatically denying all culpability, had been interpreted by his Excelleney as an admission of charges which Captain Jervis, in fact, in that very letter, indignantly repudiated. No opportunity of explanation had been afforded him, though it had been offered. He himself was, as he still is, under the conviction that the whole question was of a private character, not connected with his military duties, or military liability, and he therefore felt that any incautious admission by him, especially when labouring under the indignant feelings which his treatment had created, might be hereafter used to his prejudice.

"On this account it was that he declined to speak, preferring to leave the inquiry to take its course until he was advised whether his position on all the above points was a sound one.

"He is now called upon to attend a military committee, appointed by Sir William Mansfield, to audit his Excellency's private accounts, and he is warned that anything he says during this operation will be used hereafter against him.

"These accounts are accounts of Sir William Mansfield's private expenditure. They have been kept by Captain Jervis, at the cost of great labour and trouble, in the absence of a paid accountant. They exhibit a considerable balance due to Captain Jervis, and Captain Jervis is willing and anxious to close and present them, if the means are afforded him of so doing.

"But he respectfully protests against the indignity and the cruelty of compelling him to perform this private duty in the presence and under the surveillance of a military committee, thereby admitting, what he cannot conscientiously do, that the duty is a military duty, or that there is the slightest occasion for such surveillance, or the insult which it conveys.

"Captain Jervis feels assured that his Excellency himself would view with approbation his wish to maintain by legitimate means his just rights as a gentleman and officer, and Captain Jervis therefore respectfully solicits his Excellency's careful consideration of this statement, and hopes that his Excellency will not further insist upon his undergoing the painful ordeal, but allow him to prepare and present his accounts as he has hitherto done. An explanation in regard to the charges first brought against Captain Jervis will be submitted in the course of to-morrow.

"Any other matters that require explanation will also be fully explained on intimation being received of their character and purport.

(signed) "*Scott Jervis*, Captain,
106th Light Infantry."

'To Major F. R. S. Flood."

Copy of a Letter from Prisoner to Major *Flood*, dated 23rd May.

"Dear Flood, "23 May 1866.

"I AM sorry to be obliged to trouble Sir William with another application for a cheque for the balance of the building account due to me. I must request that you will explain to his Excellency that my expenses are very heavy for counsel, &c., in carrying on the unfortunate business about which we are corresponding at present. I cannot wait any longer for the money, and I must ask you to explain to Sir William, that if it is not convenient to him to pay the whole, I desire to have a cheque for 1,000 *Rs.* one thousand; about the half of this sum I want to pay away at once.

(signed) "*Scott Jervis.*"

From Major *F. Flood*, Military Secretary, to Captain *E. S. Jervis*, 106th Foot, dated Simla, the 23rd May 1866.

"Sir,

"I HAVE the honour to acknowledge the receipt of your private letter of this date, asking for money from the Commander in Chief, and to inform you that there is no reply to it but the one you have already on two occasions received.

"I take this opportunity of informing you that, on receipt of your second note yesterday, the committee, of which I am the President, adjourned, and reported to the Adjutant General that you had failed to comply with the instructions I had conveyed to you, to attend the committee which was sitting, by the Commander in Chief's order, for the purpose of auditing his Excellency's private accounts."

Additional Charge against Captain *Ernest Scott Jervis*, 106th Regiment (Bombay Light Infantry).

Fourth Charge.—With having at Simla, on the 9th June 1866, he being at the time in military arrest, imposed by order of his Excellency the Commander in Chief, disobeyed the lawful

lawful command of his superior officer, Colonel D. M. Stewart, Deputy Adjutant General, to deliver him his, Captain Jervis's, sword. 7 August 1866.

By Order of his Excellency the Commander in Chief,

Adjutant General's Office,
Head Quarters, Simla, 20 June 1866.

(signed) *H. E. Longden*, Colonel,
Adjutant General.

True Copy.

(signed) *J. N. Young*, Major,
Deputy Judge Advocate General.

With regard to my declining to deliver my sword, when demanded by Colonel Stewart on the 9th of June, I take the liberty of submitting the following explanation:—

The charge accuses me of disobeying the "lawful command" of a superior officer.

I respectively submit that there is no law which justifies such a demand, or which can lay any officer under an obligation to surrender his private property to another, and consequently, in the language of the law, in which charges are necessarily couched, the command was not "lawful."

On this point, I imagine there can be no difference of opinion; had the demand been made under the authority of the law, Colonel Stewart would doubtless have been able to cite the law when I expressed my willingness to give up my sword, on being shown that there really was legal authority for demanding it. The command therefore is not, I submit, "lawful command," and the charge falls.

The warrant for such a demand, it may be said, is custom, but the prosecution has altogether failed to establish it, Colonel Stewart himself having only been able to state in his evidence, that he "thinks" such a custom exists, and he is the Deputy Adjutant General of the Army.

But supposing even that such a custom does exist (which is not proved), it is a grave and serious question, gentlemen, whether a custom, not recognised by law nor embodied in any military rules or orders, can be held to be so binding that compliance with it should become a military obligation, and non-compliance a military offence.

Furthermore, when viewed as a "custom," the circumstances under which, in this instance, my sword was demanded, were such as to take away all force, meaning, or object, even from that custom.

The origin of the custom, if such there is, can only, I imagine, be that deprivation of the sword at the time of arrest, may be regarded as an outward sign or symbol of that arrest, when no other sign is at the time available, beyond the dictum of the arresting officer.

The refusal to deliver the sword at such a time might possibly be regarded as a refusal to submit to the arrest, of which the deprivation of the sword is at the moment the sole outward and visible sign.

But the case is, I submit, altogether changed when, as in the present instance, my arrest had taken place long before, having been effected by a solemn deputation of three staff officers and a public order issued by the Commander in Chief, and when the arrest had been submitted to and was in full effect at the time.

Before conveying the order Colonel Stewart had written me a private note, asking me to send my sword by my servant or the bearer of the note, a native menial; thus himself aiding my error, if such it was, in believing that the delivery of the sword forms no part of the arrest, and casting, I may say, contempt and ridicule on the whole proceeding. I will here read the note referred to.

"My dear Jervis, "4 June 1866.

"I HAVE called on you twice for the purpose of getting your sword, which I forgot to take away the day you were placed in arrest, but you were out on both occasions.

"Will you kindly name an hour when you will be at home, or will you send me your sword by one of your own servants or by the bearer?

"Yours truly,

"Captain Jervis." "*D. M. Stewart.*"

Some days after this I had a letter from the Adjutant General, directing me to prepare to receive a communication from his Excellency; no intimation or hint whatever was given me of the nature of the communication referred to, and no time, therefore, allowed for consultation or advice.

In answer to this letter, I stated that I should be ready to receive the communication, on the day appointed, at Kennedy House.

On that day, however, no one came, but I received a second letter directing me to come to the Adjutant General's Office on the following day.

In expressing my readiness to obey this order, I added, "As I wish to have a witness present with me on the occasion, I propose to bring my counsel, Mr. Tayler, with me."

7 August 1866. On that morning, however, Mr. Tayler not being well enough to come out, I again wrote the Adjutant General the following note:—

"As my counsel is too unwell to go over to Barnes Court with me this morning, you will oblige me by directing that the communication referred to in your letter be made to me at Kennedy House, at 11 this morning."

No reply was received to this; but, as I was preparing to start for Kennedy House, and about half an hour before the time fixed for the meeting, Colonel Stewart arrived at Major Innes's house, where I was living.

I think, gentlemen, I may fairly complain that I was thus taken by surprise, and at a great disadvantage. The formal character of the intimation naturally led me to expect some very serious and important message, and I could hardly anticipate that my sword, which I had been asked a few days before in a private note to send by a native servant, could form the subject of so grave an official announcement. Had the nature of the demand been disclosed, or had my second request been complied with, I should have been able to hold a consultation with Mr. Tayler and carefully consider the course to be pursued. As it was I was totally unprepared, and confess I believed at the moment that the message and demand was, from the circumstances, an unnecessary insult.

His Excellency will know, and has himself referred to, my impetuous and hasty temper. You, gentlemen, will understand the effect which such events as these would naturally have, after all I had undergone, on a man afflicted with that infirmity, though you may not approve of the mode in which it was exhibited.

These, then, gentlemen, were the circumstances under which I was impelled to decline to deliver my private sword when suddenly demanded, and if, gentlemen, you consider that in so doing I have committed any offence, I can only throw myself on your indulgence and entreat you to take into your serious consideration the position in which I then stood. Condemned unheard, on the wretched tales of a menial servant, who was suffered to slander me behind my back, expelled suddenly from the staff, where so long and so zealously I had laboured for his Excellency's interests, charged publicly with crimes on mere suspicion, humiliated and insulted by those with whom I had a few days before associated on terms of familiarity and friendship, my fellow aide-de camp and native servants privately examined behind my back, and their evidence used to construct charges of fraud and robbery, having at that very time been nearly a month under arrest: and then, while suffering under the feelings of indignation and pain, which no language is adequate to express, suddenly called upon to give up my sword without notice given me or time for reflection allowed, under circumstances which appeared to show that the demand, unmeaning and purposeless as it then was, was only made with the object of heaping further humiliation and suffering upon me.

If, gentlemen, you will consider these things dispassionately, your own hearts will, I doubt not, plead for condonation of an error, if such it be, which it was hardly in human nature to avoid.

But, gentlemen, I must here mention a most important fact, which it will be in the power of the Court to verify by inquiry in the proper quarter.

I have since received information that this very question has been already decided by the authorities of the Horse Guards, and that the ruling was that the demand, being unauthorised by law, cannot be enforced, and may with impunity be resisted.

This, I am informed, occurred in connection with a trial by General Court Martial, in 1864, in New Zealand, and the statement is that the officer arraigned, Ensign or Lieutenant Russell, who had been placed in close arrest for refusing to deliver his sword, was ordered to be immediately released.

The Fifth Charge is thus laid—

Additional Charge.

Fifth Charge.—With conduct unbecoming the character of an officer, and to the prejudice of good order and military discipline, in having at Simla, on the 22nd June 1866, in a letter of that date, written and sent by him to the address of Colonel Longden, C.B., Adjutant General, made use of the following highly insubordinate expressions, in regard to the orders of his Excellency the Commander in Chief, for his, Captain Jervis's, appearance before a general court martial.

"In reply, I have the honour, most solemnly and emphatically, to protest against this proceeding as unwarranted by law, principle, or justice, and to state, with every respect to his Excellency, that nothing short of physical force will induce me to be present at the court, and that if dragged there as a prisoner by violent means, I shall take no part in the proceedings, save to reiterate before the Court my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility he incurs by consenting to take part in the proceedings."

By order of his Excellency the Commander in Chief.

H. E. Longden, Colonel,
Adjutant General.

Adjutant General's Office,
Head Quarters, Simla, 24th June 1866.

I find

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I find this charge, gentlemen, extremely difficult to meet.

The charge does not impute offence to me for writing the letter, extract of which is appended, nor of expressing the sentiments or resolve which that letter contains, but of having "made use of the following highly insubordinate expressions."

But out of the eight lines quoted, I am truly at a loss to know which are the "expressions" referred to. It is impossible that his Excellency can refer to all, for some of them are respectful, some hypothetical, and others, though grave and emphatic, scarcely open to the charge of insubordination.

To meet the charge effectually then, it will be advisable perhaps to refer more to the substance and purport of the whole sentence, than to the expressions, and endeavour to justify whatever phrases you, gentlemen, may consider to be *primâ facie*, objectionable, by the facts to which the whole sentence refers, merely asking you to distinguish earnestness of resolve, and emphasis of expression, from insubordination.

The facts then are these. When I was warned for trial, I was requested to send in a list of witnesses; I did so, the witnesses who (as I have explained at the opening of this address), I then thought would be necessary, for the purpose of explaining fully the system of accounts and other circumstances, were mostly officers, who had been on his Excellency's staff, and there were others personally acquainted with the details connected with the former system and practice.

When I sent in the list, I was startled at receiving a letter from the Adjutant General, informing me that the "summoning of my witnesses could only be intended for the defeat of justice in my own favour," and declaring that they should not be summoned.

At the time I received this letter, believing that the ingenuity of Abbey, or some of the native witnesses, would have certainly suggested the production of some evidence, at least, calculated to prove the charge of "intent to defraud," I considered it absolutely necessary to summon these witnesses, to enable me to show the system on which the accounts had been kept for years, and the practice of allowing expenditure and consumption to be charged in the first instance to his Excellency, and subsequently recovered.

When, therefore, I was told in the absolute and unequivocal terms in which the Adjutant General's letter is couched, that I should be brought to trial without my witnesses; when I found that his Excellency, who was the framer of the charges, the convener of the Court, and the private prosecutor against me, had assumed the power, as Commander in Chief, to deny me the means of defence, while he compelled me to appear before the bar of the Court, where his Excellency himself, the members of his staff, my brother aide-de-camp, and a host of witnesses whom he had privately examined behind my back, were ready to give evidence against me, I confess I felt that such a procedure was, if I may say so without disrespect, so unfair, so illegal, and so ruinous to me, that I might as well submit to any penalty as stand such an ordeal,

It was under this conviction that I wrote, and if, gentlemen, what I wrote was true, if his Excellency had then, of his own authority, without reference to the functions and power of this Court, taken upon himself to deprive me of all means of defence, I appeal to you to say whether the expressions used by me in the passage quoted, are not strictly applicable to such a state of things; I ask you to say whether it was not an occasion calling for my "solemn and emphatic protest," and whether the serious, grave, and earnest expressions employed by me at such a perilous crisis of my life, can with any fairness or justice form in themselves the subject of military charge.

To judge of the exact crisis at which this was written, gentlemen, you must remember that the subsequent communication from the Adjutant General, containing an extract from the Judge Advocate General's letter, in which he qualifies and explains the absolute dictum of his Excellency, was not received till afterwards, and that when I wrote, I wrote under the conviction that there was no appeal from the Commander in Chief's decision on the point.

You, gentlemen, when the trial commenced, placed the question on a different footing by declaring it to be one with which this Court was alone competent to deal. Had his Excellency so viewed the question, or so expressed his purpose at the time he wrote his letter, I should never have been driven by the apparent hopelessness and despair of the moment, to make so strong a protest against what appeared to me a determination on the part of his Excellency, to set his absolute authority above the law, and bring me to ruin, without allowing me a chance of defence.

I only ask you, gentlemen, to consider the whole of these circumstances, before you pass any decision on the charge.

With your permission, I will here read the first letter from the Adjutant General of the 21st of June, and the subsequent letter of the 24th, with the extract from the Judge Advocate General's letter enclosed, that you, gentlemen, may judge whether there was any doubt or uncertainty in his Excellency's first communication.

"Adjutant General's Office,

"Sir, "Head Quarters, Simla, 21 June 1866.

"The Commander in Chief is advised that the summoning of the witnesses mentioned in your letter dated the 19th instant, can only be intended for the defeat of justice in your own favour. You are charged with scandalous conduct within certain dates, viz., from September 1865, to April 1866, and for disobedience of orders in various instances during the months of May and June 1866. It is evident from the nature of things, that

7 August 1866. none of the witnesses named in your letter can speak to occurrences on those dates, with the exception, perhaps, of Captain Christie.

"2. That officer's attendance, however, cannot with reference to paragraph 38, Section XXI, Bengal Military Regulations, and the invariable rulings in such a case as this, be ordered unless you are prepared to pay his expenses beforehand.

"3. It will, however, be competent for the court martial to determine, whether Captain Christie's evidence is necessary or material, as regards the charges brought against you.

"4. I am further permitted to inform you, that no means exist for the legal summons of any witnesses out of Bengal, for the purpose of giving evidence before a court martial.

"I have, &c.
(signed) "*H. E. Longden*, Colonel,
Adjutant General."

"Captain E. S. Jervis,
H. M.'s 106th foot, Simla."

COURTS MARTIAL.

"Adjutant General's Office,
"Sir, "Head Quarters, Simla, 25 June 1866.

"I HAVE it in command to forward to you the enclosed additional charge, which will be brought against you at the general court martial before which you have been ordered to be arraigned.

"2. I am further directed to transmit for your information, an extract of a letter from the Judge Advocate General to my address, dated the 23rd June 1866.

"EXTRACT.

"'CAPTAIN JERVIS may possibly have misunderstood the Adjutant General's letter to which he replied, and he is apparently under the erroneous impression that his Excellency finally decided as to his witnesses. It will be as well, therefore, I think, to explain to Captain Jervis now, that in the case of distant witnesses, whose summons is not obviously essential, it is for the Court, and not for the prisoner himself, or any other individual, to decide authoritatively as to their materiality; that he has named witnesses who, apart from their inaccessibility, are certainly, *primâ facie*, not essential to his case; that, therefore, the assembly of the Court cannot be deferred on their account; that however material or accessible witnesses may be, they cannot be required before a defence commences; and that, when his trial reaches that stage, he can make any statement he chooses, regarding his witnesses, to the Court, whereupon the Court, on due reason shown, will decide whether they are not material and necessary, and will shape its own procedure accordingly, giving him the full benefit, in all probability, of any doubt which may arise owing to the absence of any unattainable evidence.'

"I have, &c.
(signed) "*E. Longden*, Colonel,
Adjutant General."

"Captain Jervis,
H. M.'s 106th Regt. Simla."

And now, gentlemen, having submitted separately and in detail my defence on all the charges, on which I have been arraigned, I must trespass still further on the patience with which you have listened to me, by a brief summary and recapitulation of the principal facts and features of this remarkable case.

I need scarcely point out to you, gentlemen, that in regard to that group of charges, which affect my character as a gentleman, viz., the first charge, in its four separate instances, your verdict must pronounce me either wholly innocent or wholly guilty; I must, from the very nature of the charges, be either fully and honourably acquitted, or I must leave this Court, with character and prospects for ever blasted; branded by you, gentlemen, as a thief, convicted before the army and the world as a felon.

For, gentlemen, as the charge is laid, there is, there can be, no middle course; I either took these wines, stores, and horse cloths, as I state I took them, fully believing myself authorised to borrow them, and, with the most innocent and harmless intentions, purposing to repay, and recover their value, when I had the time necessary to adjust the accounts, or I took them at the time, with the deliberate intent to defraud, thereby committing an act, which, though legally termed "misappropriation," because the things were under my charge, is, in fact, pure and simple theft.

Let me then, gentlemen, point out to you what it is you are asked by the prosecution to believe. Nothing less than this:

That a gentleman, hitherto of unblemished name, an officer of Her Majesty's army, whose character for honour and uprightness has never been impeached, whose long and zealous service on his Excellency's staff has been cordially recognised by Sir William Mansfield himself, whose "scrupulous honour" has been repeatedly, in this very case, referred to by his Excellency; that such an one, without any intermediate gradations of vice, or shades

of

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of turpitude, has suddenly descended, not only to the commission of dishonest or unprincipled acts, but to fraud and villainy of the lowest and most abandoned kind; that this sudden conversion of character and principles has taken place, not under the influence of any of those exciting causes, which in the commercial world occasionally make shipwreck of reputations, but solely under the ordinary temptation of a few bottles of wines and stores, expended principally for the benefit of others.

But you are asked, gentlemen, not only to believe in this sudden transition from honourable conduct to deliberate villainy, but also that a man, described to you, as I have been, as having a peculiar "aptitude for business," who, to quote the significant remark of Abbey, am the "wrong man to sign what I don't understand," and to whom even my enemies have conceded at least some measure of ability and sense; you are asked to believe, not only in the hideous transformation of my moral nature, but in the sudden abandonment of all sense and reason, and the sudden accession, of what, if these things are true, can only be regarded as a fit of lunacy.

For, gentlemen, you are not only required to accept the fact of this deliberate and audacious robbery, but to believe that it was committed, as such deeds never have been committed, since the world began, openly, in the face of day, in the presence of witnesses, and with records kept at the time of the stolen articles.

And, gentlemen, on what evidence are you asked to believe in such enigmas, such enormities as these; where are the proofs, direct or circumstantial, of these unnatural doings; who, among the many witnesses, whose depositions you have heard, have pointed to one single circumstance which is calculated to raise even the slightest *primâ facie* indication of guilt, or guilty purpose; where are the concomitants of fraud to be found, the secrecy, concealment, fear, reserve, or shame; what is there to discredit my simple and consistent assertion, that I borrowed these things; why are malicious or uncharitable suspicions fostered against me by those whom I have so devotedly served; what is there to repel that presumption of innocence, which can only be rebutted by positive and undoubted evidence, which it is the part of gentlemen ever to uphold, and without which the relations of society could not be sustained?

On what, then, as I before asked, are you required to base any presumption of my guilt? Is there any ground, any foundation whatever, for such assumption beyond the suspicion, may I not say the ungenerous suspicion, which his Excellency, Sir William Mansfield, has chosen to entertain, and which his Excellency apparently expects will do service in this case, for evidence and proof?

And this, gentlemen, naturally suggests the passing mention of a subject which it is of great importance should not be lost sight of at the present moment.

I have heard it said, and it is doubtless an observation which would naturally occur to any impartial spectator of this trial, that it is impossible that the Commander in Chief of the army could have publicly charged and formally arraigned an officer, a member of his household, and a friend, on such charges as these, unless there was some truth in them, or, at all events, unless he conscientiously believed in their truth.

Gentlemen, it is not for any purposes of disrespect or recrimination, but solely to weaken, if not entirely do away with, the injurious effect upon my case of this, not unreasonable, hypothesis, that I now venture to direct your attention to a remarkable fact which bears upon it.

It cannot be unknown to you, gentlemen, that the Articles of War reprobate with great severity the public promulgation of charges against an officer, unless made on good and sufficient grounds. And it can hardly be doubted that Her Gracious Majesty, and His Royal Highness the Field Marshal Commanding in Chief, would view with marked disapprobation, the military action taken against even so insignificant a person as myself, by Sir William Mansfield, in publicly dishonouring me by dismissal, accusation, and charges before a court of inquiry, if it were found that there was no reasonable or sufficient ground for thus treating me.

I have already called your attention, gentlemen, to the fact, that the matter laid before the court of inquiry on the 10th and 11th of May, resulted in nothing but a kind and courteous invitation from the President to prepare an explanation, which the Adjutant General himself undertook to submit, with an implied assurance that it would be sufficient.

It is impossible, therefore, not to perceive, that after that second and apparently infructuous sitting of the Court, his Excellency's position was one of considerable peril, not only as subjecting him to possible liability for civil damages, but to the serious displeasure of the military authorities at home.

It was at this dangerous crisis, gentlemen, as we learn from the evidence of his Excellency himself, that the Commander in Chief summoned Abbey, Captain Harbord, and his native servants, into his private room, and there, behind my back, himself conducted a secret examination, from which he elicited these new and dishonouring charges, heard apparently then for the first time.

From what source the information was received which suggested this examination, it has been impossible to discover, as Sir William Mansfield, when asked, was unable to inform the Court. I quote the question and answer.

"How did your Excellency find out that I had misappropriated your Excellency's stores, and on what occasion?—I really cannot say how the thing first transpired in my establishment." And again,

"Suddenly, the question was put, I do not know how, to the effect that the prisoner had been living at my expense at Mahasoo."

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Without, therefore, attempting to penetrate this mystery, or to expose, as I might, many collateral incidents which would throw light upon this part of the case, I will content myself for the purposes of this defence, with pointing out the fact to which I have above adverted (leaving you, gentlemen, to draw your own conclusions), viz., that there did exist after the second sitting of the court of inquiry, a very powerful motive for discovering some matter of accusation against me, which could be in some measure connected with the previous accusations, a motive which, without venturing to impugn the sincerity of the Commander in Chief, I yet submit must doubtless have rendered him more ready to receive and act upon evidence, which under other circumstances he would possibly have scorned to listen to.

Gentlemen, it is one of the peculiar features of this case, that there are, in fact, causes for the movement so suddenly made against me, and for the unaccountable discovery of so much wickedness, which though openly committed by me, seems never to have struck any body till April last; causes which do not appear on the surface.

Did not considerations of delicacy make me reluctant to trench upon matters, which it would be painful to disclose, I might, I imagine, by reference to correspondence which took place during the month previous to the revelations of Abbey, fully satisfy the Court that there were secret motives, and undisclosed springs of action, which fully account for the subsequent accusations and attack upon my character; and which would possibly raise in the mind of the Court very serious doubts as to the reality of the imputations under which I now am labouring.

But in so doing it would be necessary to make exposures, distasteful to my own feelings, and possibly such as would be disapproved by the Court.

It may, therefore, be sufficient to point to the evidence of Abbey, as shown in the following questions and answers, leaving you, gentlemen, to draw such inferences as the circumstances may suggest.

"*Q.* When were you called upon, and by whom, to give your former deposition in regard to the matters to which you have deposed to day?—*A.* I cannot mention the date myself, I pointed them out first and foremost; they would never have been known if it had not been for me.

"*Q.* To whom did you report the circumstance?—*A.* Myself and Lady Mansfield were looking over the book, and I pointed them out.

"*Q.* When did this occur?—*A.* I cannot tell you the date, Sir.

"*Court.*] State about what time, so near as you can recollect?—*A.* I think, as near as possible, the commencement of April; wait a minute, Sir, please, about the commencement of May.

"*Q.* What took place after you had pointed out these things to Lady Mansfield?—*A.* Some time after I was called upon to repeat what these items were, in the presence of his Excellency Sir William Mansfield, and, I think, Major Flood; it could not have been more than two days afterwards.

"*Q.* Who called upon you to do this?—*A.* His Excellency Sir William Mansfield."

I leave these answers without further comment. My object has only been to show by indications which imagination must complete, that, however impossible it may appear that the Commander in Chief should bring such charges without sufficient cause, there may have been behind the scenes causes, that were sufficient for his Excellency's action, affecting both his own interests and the wishes of others.

It would be superfluous to advert again to the second instance of the first charge, except again to attract your attention gentlemen, to the extraordinary fact of there being literally no evidence whatever in support of it; a fact which, I may respectfully hope, will not be passed over without observation on the part of the Court.

The charge of helping myself to horse gear from the stable store, is so precisely similar to that of borrowing the stores, that all the remarks I have recorded regarding the one are applicable to the other, and the accusation of entering into a confederacy with a man like Abbey, and committing in his presence a deliberate act of fraud, for the sake of a few rupees, has, I hope, been sufficiently dealt with in my former remarks to convince the Court of its absurdity.

In regard to the military charges also, I need add but little in this summary to the remarks which I have already made.

I have, I trust, shown that in regard to the alleged "neglect to obey orders," no such neglect occurred in the second charge, inasmuch as there was no order given, and that although I was competent under the law, to decline producing any papers in connection with the proceedings, I nevertheless did produce the only book that was required at the time, and gave good and sufficient reason for not producing others; while, with respect to the third, that I neglected no "order," but after obeying the order of his Excellency, I declined only to comply with Major Flood's "request" to attend at a particular sitting, pending a reference laid that very day before Sir William Mansfield himself.

In regard to the fourth charge, if you, gentlemen, after full consideration of all the circumstances, still consider I was guilty of an offence, I can only throw myself on your indulgence, and offer a sincere and respectful apology for the error.

While in respect to the last charge, viz., that of using "insubordinate expressions" in my letter of 23rd June, I confidently appeal to you, gentlemen, to acquit me of insubordination, seeing that the threat by the Commander in Chief of bringing me to trial, while he himself refused me the privilege allowed by all law, military and civil, to the lowest criminal,

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was a procedure totally unwarranted by law, and such, as if carried out, appeared to threaten me with irremediable ruin, and deprive me of all hope of justice or protection. 7 August 1866.

In such a position, gentlemen, if I used earnest and emphatic language, it was the language not of insubordination, but of despair, and as such, cannot, I respectfully submit, meet with the disapproval of honourable and independent men.

And now, gentlemen, before I conclude this address, I am axious to advert to a subject which has frequently been mentioned in the course of his Excellency's examination, which is specially brought forward in the prosecutor's address, and has, as I too well know, been repeated to my prejudice and disparagement by many idle tongues.

And gentlemen, it is, I feel, a circumstance which, unless satisfactorily explained, would doubtless weigh, and weigh seriously against me, before a Court composed as this is, of gentlemen and officers, who naturally look, not so much to technicalities as to the substance of a defence, when an officer's honesty or honour is concerned. The subject to which I advert is this:

His Excellency more than once in his evidence pointedly referred to my "unwillingness" either to produce my accounts, or offer any explanations in regard to the imputations cast upon me. The same expression was used by Major Flood in his evidence, and the prosecutor in his address has remarked, that "had the prisoner complied with the order to produce to the court of inquiry the books and accounts of the Commander in Chief, or had he come to the committee subsequently formed, and offered the explanations required by the committee, it is possible that the present trial might have been avoided."

This last sentence, combined with the frequent reference made to the subject in the evidence will show you, gentlemen, how important the question is, and will, I doubt not, secure your patient attention to the explanation I am about to offer.

With regard to the legal power or practical justice of compelling me to produce papers and accounts connected with charges under investigation before a court of inquiry, or a committee avowedly exercising the functions of a court of inquiry, a proceeding which would "*ipso facto*" nullify the privilege which the law expressly allows to an accused party, of taking no part in the proceedings, I have already offered some remarks under the head of the second and third charges, and I can hardly doubt, that as far as the legal question is concerned, you, gentlemen, will assent to the position.

But, while I venture to maintain that position, as regards the charge of military disobedience, or military neglect, I am far from wishing to rest my substantive defence upon such a plea as this. His Excellency, in one of his answers, has eloquently described the course which a man, conscious of innocence, would naturally pursue when his integrity was impeached.

I read the answer:—

"*Q.* Will your Excellency state why this fact will not affect your opinion, which your Excellency states is based on the fact that no such system has existed?—*A.* Because an honest man seeks inquiry, when the honour or honesty of his character is impugned. He may be indignant; but he reserves the expression of his indignation till his character has been cleared; he courts inquiry, he searches for evidence, to save himself; he brings every possible document and book without delay to stamp the injustice of the accusation. I deeply regret to say that the prisoner's conduct in the matter concerned has been the exact opposite. He has withheld evidence, he has evaded inquiry, he has shown a determination, rising almost to mutiny, for the purpose of carrying out that evasion, and this has been done after being most solemnly told that an inquiry was held to enable him to clear his character, that inquiry being carried on in such a form, that if the prisoner had established his character before it, or had shown that he had erred only through laxity, he would have stood forth before the world not only without a shadow upon his character, but without its being known that that character had ever been impugned."

With these sentiments I cordially and unreservedly concur. I admit, at once, that a gentleman who, in ordinary cases, did not so act, would fairly lay himself open to misconstruction, and raise against himself a *primâ facie* ground of just suspicion. But, gentlemen, admitting that I should at once defend my character when openly assailed, I would yet ask, whether the adoption of this course does not, in some measure at least, depend on the way in which my assailant deals with me? If I am first knocked down, or stabbed in the back, and then told I am a thief, would you then, gentlemen, expect me "with bated breath and whispering humbleness" to produce my papers, and offer explanation to an assailant, who from the specimen I had already experienced of his manners, I might reasonably apprehend would receive that explanation by a second blow, or a more deadly stab? and, gentlemen, could any material blow, or bodily wound, be more deadly to a gentleman, than an accusation of dishonesty, ingratitude, and deceit, openly launched against him, as was his Excellency's first accusation against me, based only on the secret slander of a servant, slander listened to behind my back?

If, gentlemen, I had then and there asserted my position as a gentleman, and an officer of Her Majesty's army, if I had vindicated my rights as a man, and openly said, "I refuse to explain, or answer a charge which rests upon such evidence as this, and which has been recorded against me, when I had no opportunity of confronting my accuser;" if I had done this, could any one of you, as gentlemen, have refused to me your sympathy or withheld your approval? But I did not, as I might have done, so act. You have seen gentlemen that, stricken and overwhelmed as I was by these unexpected and dishonouring imputations, I at once wrote, not only to deny, but to offer explanation, and entreat that such explanation should be received. Here, then, gentlemen, at least, there was no "unwilling-

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ness" to explain; had his Excellency then sent for me, and treated me, I will not say as a friend, but as a gentleman, every possible explanation he had asked for would, I venture to say, have been frankly and fully afforded. But how did his Excellency act? How did he receive my offer? How did he encourage me to follow that course which he has so forcibly, so eloquently, pourtrayed, as the only course open to a gentleman?

I have, gentlemen, already shown you that my distinct and emphatic denial was transformed by some mysterious process into a confession of guilt, that I was told in a second formal memorandum that I had admitted all the foul slanders of the informer Abbey! and that, to use his Excellency's own words, nothing more was to be done! I again ask you, gentlemen, whether it was I that in this second instance showed unwillingness to explain, or the Commander in Chief who rendered explanation impossible.

The subsequent events I have already narrated: my supposed admission was put forth in its new form as the ground of decision. I was condemned, unheard and undefended, branded as a cheat, and thrust forth, without mercy or consideration, from his Excellency's premises! and, gentlemen, I may say, in sorrow and sadness, "it was not an enemy who did this." It was one whom I had served, zealously and faithfully served, for years, one who had trusted me as a friend, and to whom I had been almost as a son.

Here again, gentlemen, may I not ask, where was the opportunity, where the possibility of explanation, where the "unwillingness" which I am said to have exhibited?

Passing over then the intermediate offer of compromise and future assistance, conveyed to me through Major Innes, an offer which I would never have accepted, unless accompanied with a public apology, the next opportunity offered me for explanation, and production of accounts, was the court of inquiry, so suddenly and unexpectedly assembled, on the very day that this offer was made; and if, gentlemen, after all that had befallen me, I was unwilling to put myself further into the power of those who had thus dealt with me, can you, gentlemen, can any reasonable man in the world, accuse or blame me? If I had been condemned unheard on the mere unsupported calumnies of Abbey, if my first offer of explanation had been, as it was, contemptuously ignored, if my denial had been perverted into confession, if I had been already accused, tried, and condemned, before the Court was assembled, was it not natural, was it not a necessity, that I should look upon my further condemnation as a result already predetermined? could I feel any confidence that what I said would be duly weighed, or what I produced would be fairly dealt with?

Was it not reasonable, was it not commonly prudent, after such treatment as this, to decline, in the absence of my counsel, saying or doing aught which might be interpreted to my prejudice, or used for my injury?

But while I thus, from mere considerations of ordinary prudence, declined to take part in the proceedings, in the absence of Mr. Tayler, and stated to the President my objection to produce papers which, in travelling, had become mixed up with private papers of my own, and though I afterwards entreated Sir William Mansfield to spare me the pain and humiliation of sitting as a criminal under the hostile surveillance of brother officers, instructed to watch my words and actions (an objection and reluctance which I have already explained, under the head of the 2nd and 3rd charges), I confidently appeal to you, gentlemen, to say whether these scruples of prudence or this objection to unnecessary degradation, can be fairly interpreted as "unwillingness" either to explain my conduct or to present the accounts.

I will venture, once more, to read the letter written by me on the very date on which the court of inquiry was reassembled for the purpose of entertaining the new charges, elicited by the private examination conducted by his Excellency. I will ask you whether, as gentlemen and officers, you do not understand and appreciate the feelings which dictated it, and, gentlemen, when I remind you that before those charges of theft and villainy were publicly brought against me, based on the miserable evidence (of the character and sufficiency of which you, gentlemen, are now able to judge), no explanation whatever had been asked from me on the subject! Abbey and Captain Harbord, Abdar, and Khansaman, had been privately examined, but not a question had been asked of me; and I found myself suddenly before my brother officers, rudely assailed without warning or notice, with charges of fraud and felony; utterly overpowered, as I confess I was, with indignation, in which, gentlemen, you cannot but sympathise, stunned even to bodily pain by the open insult thus unfeelingly cast upon me, I left the room, as you, gentlemen, are aware. If death had been the punishment, I believe I should have refused to stay in it.

And then it was that this note was penned, which I now read.

"My dear Flood, "Simla, 14 May 1866.

"I ATTENDED the court of inquiry as directed. The most awful statement, false, in fact without a particle of truth, was read out by Gordon. I was made so unwell by the shock it gave me, that I was obliged to return home. Pray assure Sir William that I am only desirous to afford the fullest explanation on every point on which he wishes for it. Not a word that has been said against me is true, as I can prove: for God's sake, however, let me entreat of Sir William to spare my feelings; ask me questions, and I will explain all and every thing there may be a doubt in his mind about. Depute Gordon, or one man, to take over charge and ask for any explanation, but do not, I beg and pray of his Excellency, insult me, when there is no occasion for it.

My

"My counsel, in whose hands I placed the case, the day I received the correspondence, under the impression his Excellency would not hear me, will arrive very shortly now, and everything can be gone into. But, in the meantime, let me say that every accusation brought against me is untrue from beginning to end. 7 August 1866.

(signed) "*Scott Jervis.*"

Here then was another offer to do all that could be required, to disclose everything; explain everything, if only spared from wanton insult!

And here I would wish to refer to some passages in the evidence connected with this particular point: you will probably remember that I had to ask Major Flood three times whether explanation had been called from me. I was summoned to the committee before I could elicit a distinct reply!

His Excellency, when asked why he had not called for private explanation, before he charged me with fraud and misappropriation at a court of inquiry, stated that my contumacy prevented the possibility of his doing so!

Gentlemen, I ask what contumacy I had been guilty of before the 14th of May?

What had I done, gentlemen, before that date, that even under the most malignant misinterpretation could be designated as contumaciousness? Why the only letter which contained even the remotest allusion, not to resistance, but to even difference of opinion, as far as my conduct was concerned, before the 14th, was my letter of the 10th May, expressing my desire to exercise the privilege which I then believed I was competent to exercise, in not attending the court of inquiry. This letter, gentlemen, has already been filed by the prosecutor; but I would wish once more to read it to you, with his Excellency's reply, that you may judge whether either the tone, the spirit, or the purport of that letter is contumacious or disrespectful.

To *Colonel Longden*, C.B., Adjutant General.

"Sir, "Simla, 10 May 1866.

"In reply to your letter, this moment received, I must beg of you to assure the Commander in Chief that I am ready now, as at all times I shall be, most cheerfully to obey and act up, to the best of my power, to any order given me by his Excellency.

"As regards my attendance at the court of inquiry, for the object laid down in your letters, I will, with the Commander in Chief's permission, avail myself of the privilege which is, I believe, allowed me by the regulations of the service, and not be present at the court of inquiry in the absence of my counsel.

"I have, &c.

(signed) "*Scott Jervis.*"

"Adjutant General's Office,

"Sir, "Head Quarters, Simla, 10 May 1866.

"Having laid before the Commander in Chief your letter of the 10th May 1866, his Excellency desires me to advise you that you are pursuing a most dangerous course. His Excellency might at once have placed you in arrest for contumacious disobedience of military orders. The book from which you quote is merely a law manual, which may or may not be correct.

"2. The edition of that book from which the passage in your letter is taken, clearly committed a great error when it laid down a position in which an officer on the full pay of Her Majesty's service could decline to obey an order coming from duly constituted military authority.

"3. That error has, however, been corrected in a subsequent edition of the book in question.

"4. His Excellency, considering that you have been misguided, owing to ignorance of the first principles of military discipline, has permitted me, as a last chance to you, to annex an extract* from a late edition of the book in question, for the correction of the error under which you are labouring.

"5. The Court has adjourned until 1 o'clock P.M., this day. If you are not in attendance at the Court at that hour, you will be placed under arrest for disobedience of orders, and the Court will proceed with its investigation in your absence.

"I have, &c.

(signed) "*H. E. Longden*, Colonel,
Adjutant General."

"Captain Jervis, H. M. 106th Foot,
Late Aide-de-Camp to the Commander in Chief."

That

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* Extract from Manual on Military Law, by Colonel Pipon. Edition of 1863, page 171.

"When the conduct of an officer or soldier is the subject of investigation, he may decline to take any part in the proceedings, to make any statement, or to examine any witnesses before the Court: he has a right to be present, and it would be his duty to attend, if ordered to do so."

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That it was so interpreted by his Excellency Sir William Mansfield is too true, as his letter shows; but his Excellency had before interpreted my distinct and positive denial, as an admission of guilt, and his canon of interpretation will not therefore, I conclude, be considered authoritative or final. My offence clearly only consisted in my ignorance of the change which had been made in the rule to which I adverted, in the last edition of Pipon's Manual; and when his Excellency corrected me, by a quotation from a later edition, I at once submitted, and, as you are aware gentlemen, attended both the sittings on the 10th and 11th.

I leave it then for you, gentlemen, to say whether any part of my conduct or communications were such as to have prevented his Excellency from calling upon me either privately, demi-officially, or officially, for an explanation in regard to the grave accusations which, resting only on the *ex parte* statements of dependents, was brought forward without notice on the 14th. And whether in the absence of any opportunity being given me before I was stunned and struck down with the public charge, I can be fairly accused of unwillingness to explain, or a desire to avoid inquiry.

Lastly, gentlemen, you have seen that when, after suffering all these things, I made application to his Excellency to convene a second court of inquiry, composed of officers who had been totally unconnected with the previous occurrences, again showing my desire for inquiry, so long as it could be conducted with strict impartiality and entire freedom from bias; the application was met by his Excellency as an additional offence. I was accused of insulting the officers who had sat on the previous court, though I had emphatically denied any such intention; and his Excellency in his evidence has declared that by that application I also insulted him as Commander in Chief of the army.

Thus then, gentlemen, I have, I confidently hope, proved to your satisfaction, that at every stage and period of this distressing case I have ever been ready to give explanation, if opportunity had been afforded me of doing so without being subjected to indignity or insult. In the first matter of the farm, neither denial, remonstrance, offer of explanation, or submission, saved me from condemnation, insult, and disgrace.

At the court of inquiry, though wishing to avoid attendance if possible, when shown that I was out of order, I did attend, and gave, as Colonel Stewart has declared, all the information asked for.

On the re-assembly, overpowered by the unlooked for dishonour that was cast upon me, I left the Court, but immediately wrote to say that, if spared from insult, I would give any information that was required; and finally I myself made application for an open court of inquiry, which was peremptorily refused, the refusal being accompanied by severe and harsh rebuke.

Gentlemen, I thank you for the patience with which you have listened to this long and perhaps tedious explanation; but I feel that if I have been misjudged, the idea that I evaded explanation has probably been one of the principal causes of that misapprehension; and it is for this cause, not for any purpose of unnecessary recrimination or disrespect to Sir William Mansfield, that I have entered on the discussion.

Had such been my object, gentlemen, I might have pointed to many incidents of this trial which I have forborne to mention. I might have adverted to the fact, that while his Excellency professes to have brought me to trial on charges of theft and fraud, solely in pursuance of a public duty, and for the interests of the army at large—thereby doing violence to his private feelings—he has not scrupled, while giving his evidence as witness, to load me with irrelevant and unnecessary insult—has charged me with untruth and taunted me with dishonesty, thanking Heaven, or his destiny, that he did not trust me with his banker's book, and otherwise exhibiting feelings towards me which are not exactly compatible with the principles professed.

I might have pointed to my protracted sufferings, my long arrest, involving deprivation of exercise and liberty, the harsh and cruel language of the letters addressed to me, the withholding of the proceedings before the court of inquiry, and other significant facts, all tending to aggravate my sufferings and increase the difficulties of my position.

But, gentlemen, though such points would be of incalculable benefit to me before a civil tribunal, where the "*animus*" of a prosecutor is always carefully considered in the investigation of criminal charges, before a Court like this, I have been anxious to adhere as much as possible to the reality and substance of the matter before you, only adverting when actually necessary to incidental or collateral subjects.

And now, gentlemen, I leave this case with confidence to your impartial judgment. I place my honour, my future prospects, nay, so to speak, my very life in your hands, for life, without honour, to me would be insupportable. I say again, as I said at first, that I am, in the matters which affect my integrity, either totally innocent or altogether guilty! If, in the absence of all proof, and in violation of established principles of law and justice, you assume, as his Excellency has assumed, that I am guilty! then you will brand me as a felon for all future time; but if in the remembrance of your oaths, and in the interests of justice, you refuse to let suspicion take the place of evidence, you will then, by your verdict, restore me to freedom, to society, and to myself—as one whose only crime was, as far as these charges are concerned, that he over-estimated the confidence reposed in him by his friend, and trusted too implicitly in the belief that high reputation and exalted rank must ever be accompanied by gentlemanly feeling and nobility of nature.

For I did in very truth believe, strange as the delusion may now seem, that I was an honourable

honourable gentleman, exercising an honourable trust in the interests of one who would return his unbought service with unrestricted confidence; my undisturbed conviction was that devoting myself, as I did, heart and soul to Sir William Mansfield's interests, my acts would be construed by the canons of gentlemanly and honourable conduct; that if in the discharge of undefined duties committed to me, anything was perchance objected to, it would be openly mentioned to me; or if my acts should be exposed to misconstruction, I should be the person appealed to for explanation. 7 August 1866.

If I could have conceived it possible that the tales of servants would, behind my back, have been listened to by the friend to whose interests I was devoting myself,—that the ideas of a creature like Abbey would have been accepted in explanation of my conduct, while I myself was kept at a distance, and denied access to his Excellency; had such things crossed my mental vision, even for a moment, it is highly probable that I should have acted differently, and hedged myself in with wise precautions against such a contingency. If I could have dreamed that the unbought and unrequited service I was rendering Sir William Mansfield was, like the menial service of a lacquey or a butler, to be watched with suspicion and tested with distrust, I think I may safely say that I would long ago have declined such honourable serfage, and asked permission to rejoin my regiment; and it will, I imagine, depend greatly on the verdict which is passed in this trial, gentlemen, by you, whether such services are ever again required, or ever again rendered by gentlemen, at least with a willing and untroubled heart.

Mr. President and gentlemen, I will trouble you no more; whatever be your decision in this case, I have at least endeavoured to meet each charge with an open and substantive defence on the facts. I have vindicated, or tried to vindicate myself, not by legal technicalities, evasion, or quibble, but by full, frank, and unreserved disclosures of all that has occurred.

I have made no sensational or dramatic appeal to your commiseration or sympathy, but have contented myself with the development of the direct circumstances of the case, exposing only such portions of the collateral incidents as were actually necessary to explain my position, and give a clue to my feelings.

I now appeal to you, gentlemen, not for favour, but for justice; not for compassion, but impartial judgment.

And I make the appeal with confidence, because I still place reliance in the independence, honour, and gentlemanly spirit of the army.

I thank you once more, gentlemen, most cordially, for your patience and forbearance: I place myself in your hands, and pray God to assist your counsels.

(signed) *Scott Jervis*, Captain,
106th Light Infantry.

The Court rises for half-an-hour.

By *Judge Advocate.*] I wish to bring to the Court's notice that the counter-cheques are not evidence of those cheques having been drawn, and as these are produced in contradiction of evidence on oath, I think it right that this should be brought prominently to the notice of the Court and the prisoner, while it may be possible for him to complete the omission.

By *Prisoner.*] May I ask if the prosecutor objects to these counter-cheques being produced as evidence.

By *Prosecutor.*] I know nothing about them, and cannot, therefore, speak to the point.

By *Prisoner.*] I never expected that the prosecution would have questioned such evidence, and I would wish to know whether there is any such objection. If there is, I would solicit time to obtain the cheques themselves from the bank.

By *Prosecutor.*] It is impossible for me to say, unless they are produced as evidence, whether they are evidence or not. At present they have merely been read as part of the statement.

By *Prisoner.*] I do wish to produce them as evidence.

The Court is closed.

The Court decide to allow such reasonable time as may be applied for, to enable the cheques to be produced.

The Court take this opportunity to note that Lieutenant Colonel Barwell having been promoted to the rank of colonel, with standing senior to Colonel Carey, takes his seat above him.

It is also brought to the notice of the Court that the prisoner's address is not ready for delivery to the Judge Advocate, the fair copy being incomplete.

The Court permit the prisoner to hold the same over until to-morrow.

The Court is opened and the above read out.

By *Prisoner.*] I will write by to-day's dâk, and also telegraph, as it is possible that the bank may not reply to the telegram; it would, perhaps, be the safer plan to allow 12 days, so as to admit of the answer from Calcutta and Bombay. If the cheques are sent in reply

[illegible] 1866. to the telegram, I can inform the Court. May I ask whether the prosecutor admits the books produced to be what they profess to be, or requires evidence to verify them? As I understand that the prosecutor has applied for permission to reply, may I ask whether the Court consider him entitled to reply on the whole case, or only the points connected with the evidence which I have adduced, viz., the book and cheques?

I would also, with permission, ask whether the prosecutor is to prepare his reply himself, or whether the Commander in Chief will assist him.

I ask this because of the complication which may arise in consequence of his Excellency's being the confirming authority.

By *Prosecutor*.] I acknowledge the books to be—

1. A book with "cash account" printed on the back of it, with several pages cut out of it, and a memorandum in Captain Jervis' handwriting, alleging that those pages referred to Captain Christie's charge. The remainder of the book blank.

2. A book with "ledger" printed on the back. Entries on two folios, apparently accounts with Folkard and Company, and George Claridge. The remainder of the book blank.

3. A book containing entries, all apparently relating to sheep; initialed on one page by Colonel Kirby; on several pages signed by Captain Jervis, on others initialed by him.

4. Two memoranda, apparently relating to accounts with Hassian Khan, Khansaman.

The defence not being closed, I have hitherto made no request regarding my reply.

I submit that the defence which has been set up entitles me to the right of a general reply. No witnesses have been examined, but documentary evidence has been put in, and has been admitted by me to the extent to which my statement just recorded sets forth.

I may add, that if the Court rules to adjourn for five or six days, to enable the prisoner to procure the original cheques, of which the counter-cheques have been already put in, I shall be prepared to proceed with my reply on re-assembly, presuming that the production of those cheques is the only point pending.

With reference to the last question by the prisoner, I would state that the Commander in-Chief has placed the conduct of the prosecution entirely in my hands, and that his Excellency has no intention of assisting or taking any part in the reply.

The Court rises at four o'clock in the afternoon, and adjourns until Monday, the 20th August, at 11 o'clock in the forenoon.

Twenty-third Day.—Wednesday, 8th August 1866.

8 August 1866. The Court assembles at the same place, at 11 o'clock in the forenoon, under instructions from the President.

The President, Members, Judge Advocate, and Interpreter, all present.

The Prisoner and Prosecutor appear in Court.

By *Prosecutor*.] Having had an opportunity of inquiring into the nature of the counter cheques it was proposed to put in as evidence for the defence, and which could not be accepted as such without an express admission on the part of the prosecution, I beg to inform the Court that I am now prepared to admit the counter-cheques as evidence of the cheques they purport to represent.

At the request of the Prisoner the counterfoils are here copied into the proceedings.

On the Asiatic Banking Corporation; Calcutta Agency.

1. No. XV. 6. 1. 1866. Lt.-Col. Hatch. Crockery, Glass, &c., on acct. of C. in C. *Rs.* 351. 0. 0.

2. No. 0122. XXIII. 12. 2. 1866. Acklom; as present from C. in C., on acct. of C. in C. *Rs.* 50. 0. 0.

3. No. XXIV. 15. 2. 1866. Bishwat Dass. Bill for matting, on acct. of C. in C. *Rs.* 313. 10. 0.

4. No. XXVI. 17. 2. 1866. Supt. Army Clothing Dept. Silver lace, on acct. of C. in C. *Rs.* 48. 0. 0.

5. No. XLI. 14. 3. 1866. The Agent E. I. Railway. Lady Mansfield's and maids' tickets, on acct. of C. in C. *Rs.* 143. 2. 6.

6. No. XLIV. 21. 3. 1866. Abbey, for cash for house, on acct. of C. in C. *Rs.* 300. 0. 0. 8 August 1866.

7. No. XLV. 23. 3. 1866. Major Brooks, for furniture, on acct. of C. in C. *Rs.* 338. 0. 0.

8. No. XXXVI. 5. 3. 1866. Gudnoo Cook, extra wages, on acct. of C. in C. *Rs.* 96. 0. 0.

On Messieurs Forbes & Co., Bombay.

1. 25. 10. 1865. Mr. Prince Grant, on acct. of C. in C. *Rs.* 138. 8. 0.

The defence is closed.

By *Prosecutor.*] I stated to the Court on Monday, that if it ruled to adjourn for five or six days, I should be prepared to go on with my reply, presuming that the production of the cheques was the only point pending.

The defence is now closed, but it will probably not be available to me for reference until to-morrow. Owing to this unexpected delay, I request that the Court will be good enough to allow me until Wednesday or Thursday of next week, which will give me the five or six clear days at first asked for.

By *Prisoner.*] I would only submit to the Court, that they will consider that I am under close arrest. And I would also ask whether the prosecutor is allowed to refer to the defence, except in open Court.

By *Judge Advocate.*] The Bengal Military Regulations lay down that the prosecutor is to have access to the proceedings for the purpose of preparing his reply.

By *Prisoner.*] I would submit that the Bengal Military Regulations, under the 99th section of the Mutiny Act of 1865, do not affect me.

The Court is closed.

The Court decide that the prosecutor has a right of access to the entire proceedings out of Court.

The Court decide to adjourn until Thursday, the 15th instant, at 11 o'clock in the forenoon.

The Court is opened, and the above read.

The Court rises at noon, pursuant to the above adjournment.

Twenty-fourth Day.—Thursday, 16th August 1866.

The Court assembles at the same place, at 11 o'clock in the forenoon. 16 August 1866.

President, Members, Judge Advocate, and Interpreter are all present.

The Prisoner and Prosecutor appear in Court.

The *President* directs the Judge Advocate to read to the Court General Order by the Commander in Chief, No. 169, dated 15th August 1865.

The *Prosecutor* rises to read his reply, which is entered.—

Mr. President and Gentlemen,

After the inquiry before the Court had lasted 20 days, of which much the greatest part was occupied with the cross-examination of the witnesses for the prosecution, the prisoner, Captain Jervis, commenced the preparation of his defence. That defence he has now submitted to you. And you will agree with me that not its least remarkable characteristic is its extreme simplicity. It consists in the admission of nearly the whole of the facts charged against Captain Jervis by the prosecution, joined with an attempt to put upon those facts a construction favourable to the prisoner, partly by means of general argument, partly by the help of a few additional facts, either elicited by the prisoner in cross-examination, or asserted by him on his own authority. I venture to affirm that if the cross-examination of the witnesses had been confined to the points on which, as it now appears, the vindication of the prisoner's character turns in his own opinion, this trial, prolonged to so extraordinary a length, need not have lasted more than a few days. I shall hereafter endeavour to point out to the Court the bearing of the manner in which the case has been conducted upon the questions which the Court has to decide. At present I will merely beg the Court to call to mind the prisoner's cross-examination of the witnesses, and to contrast its tenor with the nature of the defence which has been ultimately put forward.

In attempting to reply to the case for the defence, I propose to begin with the first charge, which alleges scandalous conduct unbecoming the character of an officer and a gentleman, and of this I will select the first and third instances, the nature of which is precisely similar,

viz., the misappropriation of certain property belonging to the Commander in Chief; and as regards these instances, I would solicit your attention to the extraordinary fact that the defence turns entirely on a grave mistake of law. The prisoner has asserted in every form of words, and insisted at every possible stage, that he is to be presumed to be innocent until he is proved to be guilty, and that the burden of showing guilty intention rests on the prosecution.

No one can dispute for a moment that this presumption of innocence, until the contrary be proved, is a general principle of law: but, like all other general principles, it is liable to be overruled by a special principle, and it so happens that this particular case is governed by a special rule. What, gentlemen, is this special principle? It is one exceedingly familiar to all persons versed in criminal law, but it need not be considered any monopoly of theirs; for, in fact, it is not more a rule of law than a maxim of common sense. It is thus laid down by Lord Mansfield, in the great case of the King *versus* Woodfall, "Where the act done is in itself unlawful, the proof of justification or excuse lies in the defendant, and in failure thereof, the law implies a criminal intent." Now there can be no simpler or plainer instance of an act in itself unlawful, than taking away a man's property without his permission. When property has been so taken, it is for the taker, and for the taker only, to remove the presumption of guilty intention; and this, indeed, is a conclusion to which the Court's unassisted good sense would be sure to guide it; for, if the rule were otherwise, if the proof of criminal intention rested on the owner of the property, it must be obvious that it would be impossible, or extremely difficult, to bring home the simplest acts of dishonesty; and the most patent offences, such as the commonest thefts, would go unpunished for want of proof. It is clear, then, that when a charge of dishonesty is brought against a prisoner, it is sufficient for the prosecutor to prove the unlawful act; it rests with the defendant to show the absence of dishonest intention. The prosecution would certainly do wrong in suppressing any evidence it can command to show the intention, but proof of this intention is not necessary to the establishment of the charge. The law itself presumes the intention, and calls upon the defendant to refute the presumption by every means in his power.

Now, gentlemen, the rule of law, or, as I have ventured to put it, of common sense, being as I have described it, I must beg you to ask yourselves how stands the prisoner with regard to the two particular instances before you? In the first, he admits that he took a considerable quantity of wine and stores without the knowledge or permission of the owner, Sir William Mansfield, and that he applied them to his own use and that of others. In the second, he acknowledges to having ordered horse gear on the credit of the Commander in Chief, and that he appropriated it to his own purposes. This being so, the onus of proving innocent intention rests wholly and solely upon him; and in the absence of such proof, the presumption of his guilt is not a mere matter of opinion, but is a clear and incontrovertible doctrine of law.

And, gentlemen, when the full effect of the admissions made by the prisoner comes to be understood, and the proper legal inferences from them are comprehended, it will be at once seen that much of the prisoner's defence is misplaced and unbecoming. A much more subdued tone, a much slighter impatience of suspicion, a much more moderate indulgence in complaints of misconstructions and harsh judgment, a much more charitable version of the acts of others, are befitting in one who, by his own admissions, has placed himself in such a position that everybody who presumes his dishonesty can do so with the authority and under the sanction of the law. And I will here observe, without wishing to prejudice or injure the prisoner by the remark, that as soon as the true state of the case, as gathered from the prisoner's admissions, is established, all that vast fabric of social and literary misrepresentation which has been built up round the name of Sir William Mansfield crumbles away; for, as it now appears, the case which the Commander in Chief had to deal with was this: The prisoner had done the acts imputed to him, and in the absence of proof or explanation to the contrary, it was the legal duty of the Commander in Chief to believe him guilty. Those proofs and explanations Sir William Mansfield has over and over again requested the prisoner to furnish. Those proofs and explanations the prisoner has over and over again declined to give. I will show that he has not even now furnished them, but has evaded doing so under the most transparent pretexts. Begging the Court to bear firmly in mind that it is for the prisoner, and the prisoner alone, under the circumstances of the case, to disprove a dishonest intention, I will go on to examine the arguments on which he seeks to establish his innocence in respect to the first and third instances of the first charge. These are, or would seem to be:

1. That the rules of the establishment permitted his taking the stores and pledging the Commander in Chief's credit for saddlery.

2. That there was a custom of the household under which these acts might be done.

3. That the Commander in Chief was in his debt.

4. That the stores were old; that there was little or no storage at Woodville: that it would be a convenience to the Commander in Chief to have them used; and other similar excuses.

I will take first the allegation that the Commander in Chief was in the prisoner's debt, not because it is of any real importance as bearing directly on the charges, but because it is well calculated to create prejudice against an officer in Sir William Mansfield's high position;

position; and because when it is sifted it shows, in a very remarkable manner, with what amount of reason the prisoner is entitled to urge the claim he has more than once asserted, to the ordinary credence granted to a gentleman in opposition to the oath of a witness, a claim which he apparently pushes so far as to assert a right to dispense with evidence, and this even, when directly impugning the testimony of the Commander in Chief. 16 August 1865.

I say it is of no importance, because, if it were really true that Captain Jervis had paid bills for the Commander in Chief out of his own funds, without his knowledge or permission, all that can be said is, that he took a very great liberty with his Excellency, and so far from justifying any other injury he has inflicted on him, has rather added to it. But did he in fact place Sir William Mansfield in his debt? Here I may say that, whether his Excellency is indebted to the prisoner now, or ever was at any given moment, are questions which it is quite impossible for the prosecution to answer with absolute positiveness: because it is the prisoner who witholds and obstinately refuses to produce the only evidence by which the point could be conclusively settled, viz., the whole of the books, papers, vouchers, receipts, and cheques connected with the prisoner's management of his Excellency's household. But even with the scarcity of evidence which the prisoner has taken care to create, there is the strongest reason for thinking that the assertion is untrue. The prisoner has indeed made the injurious imputation that he always had great difficulty in obtaining money from his Excellency. It is one of the advantages which the prisoner enjoys from the necessity of his position, that he can make an assertion of the kind, unsupported by oath, and without risk of cross-examination. If he had been on oath it would have been the duty of the prosecution to cross-examine him strictly on the point, and had he ventured to adhere to his statement, I should have called Sir William Mansfield to give it the most distinct, detailed, and peremptory contradiction. His Excellency has indeed implicitly denied it on oath already. I will read his evidence on the point:

"*Q.* Is your Excellency aware that the money actually paid was all my own money, your Excellency's account having been overdrawn?—*A.* I am not aware of anything of the sort, and I cannot believe that my account was overdrawn, because, so far as I have ever seen my accounts, there has been invariably a credit at the beginning of every month. Three or four days before the prisoner's journey began, he received from me the sum of 4,000 rupees, viz., 2,000 rupees for current expenditure (that is, for the current month of March), and 2,000 rupees for the purpose of discharging some eight or ten bills, of which he showed me a list. I was about to write out cheques for those bills, when he proposed to me to give him the whole sum, and that he would go round and pay them to save me the trouble. I have gone into this detail to show that the prisoner received from me the money he asked for, and, as has been stated before in my evidence, I believe a credit and debit account has never been permitted between my staff officers and myself."

The prisoner certainly questions the accuracy of the Commander in Chief's account of this conversation, and even asserts that as it actually occurred, his Excellency admitted that the prisoner had been making payments out of his own pocket, on his Excellency's account. The prisoner states: "The conversation that really took place was, that I told him I had paid the bills," and his answer was, "Why, you must have paid them out of your own money." And he adds, "It will thus be seen that his Excellency's account was constantly overdrawn, on the occasion I have last mentioned, to the extent of nearly 2,000 rupees."

Now, I ask the Court to consider this part of the prisoner's cross-examination of the Commander in Chief. It will be seen, and I beg, gentlemen, your careful attention to the fact, that the prisoner altogether omitted to cross-examine his Excellency as to this pretended admission, and as to the pretended inaccuracy of his Excellency's recollection of what passed on the occasion. Why was this? Taking the text of the defence now actually advanced, it is not too much to say that nine-tenths of the questions asked in cross-examination were wholly irrelevant and without purpose. Why did not the prisoner for once pursue a relevant course of examination, and cross-examine his Excellency as to the details of the conversation? I submit that the true reason for the departure from the prisoner's unexampled license of cross-examination can only be that he feared the answer, and knew that his Excellency would flatly deny that he ever admitted that the prisoner had been paying debts for him out of his own money. Instead of adopting the simple and natural expedient of relevant cross-examination, the prisoner has taken a course which I am compelled to characterise as mere mockery of the Court. He has produced and tendered as evidence a bundle of counterfoils of checks. I was not prepared at first to admit this supposed evidence, but I have since consented to accept it for what it is worth. And I ask you, gentlemen, what is it worth? It merely proves this, that the prisoner, at whatever date, drew certain cheques on his own banker. Whether the cheques were drawn in payment of any bills referred to in the conversation in question; whether they were drawn on account of the Commander in Chief at all; whether, if they were so drawn, the prisoner had funds from the Commander in Chief to meet them; all these are points on which not one shred of evidence is offered. And yet the Court will remember that the prisoner is necessarily in possession of the completest evidence on all the points. Were the books and papers, called for by the Judge Advocate before this trial commenced, produced, half-an-hour's scrutiny would show the whole. It is to be observed that in the copy of the defence recorded in the proceedings, and to which I have had access, the prisoner states that he puts in not only the counterfoils of cheques, but also the receipted bills. I believe also, from my

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recollection, that when the address was read, it was stated that the receipted bills would be put in. But this point will doubtless be remembered by the Court.

These bills, if put in apart from the entire papers in the prisoner's possession, would carry him a very little way in his proofs. But, in fact, and I would call attention to the fact, he has not put them in.

I have now said all that seems necessary about the evidence, if evidence it is to be called, which the prisoner has offered in support of a statement about his Excellency, which is so put as almost to amount to an imputation of perjury. I will proceed to consider what the prisoner has to struggle against in his attempt to prove Sir William Mansfield in his debt.

First.—There is the cash book (or ledger as it is called by his Excellency), handed in by the prisoner to the Court of Inquiry on the 14th of May, which contains a series of plain written admissions by the prisoner, that he was himself in the Commander in Chief's debt during the entire period to which the accounts extend, viz., for the months September, October, and November. The explanation he has offered of this, I do not think I use too strong language in describing as one of the most audacious ever placed before a court martial or a court of justice. He now says that the entries are fictitious, both as to date and amount; that they indicate not sums received, but sums which he hoped, or expected, or believed he ought to receive. There is nothing to show when this account was made out, but I would beg of the Court to remember that it was handed in by the prisoner on the 14th of May, the period to which it refers being the months of September, October, and November of last year.

I have already had occasion to draw the attention of the Court to the fact that some of the entries of disbursement in this account do not correspond with the evidence recorded, but whether the epithets "imperfect," "rough," which the prisoner has applied to these accounts, are meant to apply to the disbursement side, I will not stay now to inquire. The question is with the receipts; and the prisoner's statement with regard to the sums here shown is so important, that I will take the liberty of reading that portion of the defence:

(Extract.)

"Now, gentlemen, to show you that the account in this book is, as I have described it, merely a rough and most imperfect sketch or outline of accounts, containing not any accurate statement of receipts, but a sort of memorandum for my own information, I will ask you to look at the second item of receipt on the credit side, viz., cash by cheque of Commander in Chief on Simla Bank, 2,000 rupees.

"Now this is entered as received on the 1st September; but, gentlemen, I here show you a memorandum sent me, at my request, by Sir William Mansfeld, and signed by Major Flood, of all the cheques received by me from his Excellency since I took charge of his establishment on the 1st September, the first having been drawn on the 13th October. So that it is clear this entry is not an actual receipt, and was put down, not because it was received, but because had his Excellency paid punctually, which he never did, it ought to have been received at the beginning of the month, 2,000 rupees being the sum regularly allowed for the monthly expenditure.

"Again, you will perceive, gentlemen, that there is no expenditure whatever in September; a sufficient proof that this does not profess to be a correct, or in any way a complete account, the September payments being entered in October, subject to future distribution, when the fair account was drawn up.

"Further, I beg to point out to you, gentlemen, that the item of 2,000 rupees, entered in the account for October as received on the 13th of that month, is also an inaccurate entry. The cheque drawn on that day by his Excellency was for 3,000 rupees; 2,000 of which was on account of the new house that I was building, and 1,000 rupees only on account of household expenditure.

"Thus, again, it is evident that 2,000 rupees was entered because that was the usual sum allowed, although 1,000 rupees only had been actually received on account of household expenses.

"In November no payment whatever was made by his Excellency.

"And thus, even by the account contained in this book, instead of a credit at the end of November of 220 rupees, if the 1,000 rupees erroneously credited be deducted, there would be a debit of at least 800 rupees due to me.

"The first conclusion therefore which the prosecutor has asked the Court to draw from this account book, viz., that there was always a credit to his Excellency during the three months to which it refers, is clearly erroneous; such credit being merely nominal, arising from the incompleteness and imperfection of the account itself, which, as I have before stated, was a rough copy only, the complete account never having been made out, as is apparent from the blank cash book itself."

This is the prisoner's explanation of the cash account. The entries are declared to be altogether fictitious, at least so far as the receipts are concerned. He does not hesitate to deny the correctness of his own figures, in order that the direct evidence of this book may be annihilated, and thus to make way for his bare statement, unsupported as I have shown by a tittle of evidence that the Commander in Chief's account was always overdrawn.

If it be credible, which it hardly is, that a man should keep a cash book for his own use full of false items, it is wholly inconceivable that, at the end of each month, he should balance

balance the account and show a fictitious credit, or a fictitious debit; such fictitious balance being carried forward and included in the next month's accounts. The prisoner's explanations I must really, gentlemen, leave to your common sense, and to your natural power of estimating probabilities. 16 August 1866.

But, apart from the incredible statement that such an account, closed, balanced, and connected, was a mere rough cash account, a most imperfect record of cash transactions, I shall now proceed to show, 1st, that, in reality, it is not so incorrect as the prisoner would make it appear; and, 2nd, that it is not the rough cash account from which the large cash book, now blank, would have been completed, if time had been allowed.

I will now read to the Court the cheques paid to the prisoner by the Commander in Chief, as shown in the memorandum of the 15th of May:

	Rs.
3rd October, cheque, No. 9, on Simla Bank - - -	2,000
13th October - - - - - - - - -	3,000
28th October - - - - - - - - -	600
20th December - - Oriental Bank - - -	3,356
(The remainder are of a still later date.)	

The prisoner, in the extract of his defence which I have just read, alluding to this memorandum, mentions the first cheque as having been drawn on the 13th October. This is probably a clerical error, as it will be seen that is the date of the second payment. And first, with regard to the cheque drawn on the 13th of October: the amount of this, it will be seen, was 3,000 rupees; part was on account of the house expenses, part on account of the building. The entry in the cash account is correctly dated the 13th October, but the amount is 2,000 rupees. If this entry were correct, the balance of the cheque, viz. 1,000 rupees, would be the amount given for the building in October. But the prisoner says that the entry is inaccurate; 2,000 rupees being the proportion paid for the building; 1,000, only, for the house expenses. Now, I will show to the Court that the entry of 2,000 rupees, in the household expenditure account, is perfectly correct. I read to the Court the building account (A.)* handed in by the prisoner to the committee of audit on the 16th of May. It is a copy only, the original being unfortunately filed in the civil court, whence this certified copy has been procured. It will be seen that there is no receipt of 2,000 rupees in October, but there is one for 1,000 rupees in that month. The other 1,000, part of the 3,356 rupees drawn on the 20th December

* (A.)

SIR WILLIAM ROSE MANSFIELD, K.C.B., K.S.I.—Building Account.

Date.	Particulars.	Debtor.	Creditor.	Debtor or Creditor	Balance.
1865:		*Rs. a. p.*	*Rs. a. p.*		*Rs. a. p.*
August - -	To amount paid Coolies as per voucher	195 - -	- -	Debtor	195 - -
September -	Expended as per voucher - - -	135 - -	- -	-	330 - -
October - -	Ditto - ditto - - -	1,457 11 6	- -	-	1,787 11 6
,, - -	By amount by cheque - - -	- -	1,000 - -	-	787 11 6
November -	Ditto ditto - - - -	- -	1,000 - -	Creditor	212 4 6
,, -	Ditto - ditto - - -	- -	600 - -	-	812 4 6
11 ,, -	To Bujnoo (contractor) cheque - -	300 - -	- -	-	512 4 6
14 ,, -	Jewan Sing ditto ditto - -	100 - -	- -	-	412 4 6
,, -	Futtoo Buneah ditto - -	48 10 -	- -	-	363 10 6
,, -	Advance to Colonel Faddy, cheque for works.	800 - -	- -	Debtor	436 5 6
December -	By cheque - - - - - -	- -	400 - -	-	36 5 6
,, -	Ditto - - - - - -	- -	400 - -	Creditor	363 10 6
12 ,, -	To advance to Colonel Faddy for works (cheque).	300 - -	- -	-	63 10 6
23 ,, -	Jewan Singh for ice house (cheque) -	200 - -	- -	Debtor	136 5 6
1866:					
February -	Two cheques paid Colonel Faddy on 1st and 26th February.	500 - -	- -	-	636 5 6
9 March - -	Cheque paid ditto - - - -	200 - -	- -	-	836 5 6
24 ,, - -	Khoodoo and Co., for hinges, &c. -	200 - -	- -	-	1,036 5 6
17 April - -	Advance to Kedarnath Baboo for works.	200 - -	- -	-	1,236 5 6
18 ,, - -	Ram Doss for Timbers (cheque) -	508 - -	- -	-	1,744 5 6
25 ,, - -	Jewan Singh on account ice house (cheque).	100 - -	- -	-	1,844 5 6
	By amount refunded by Captain Jervis	- -	26 4 -	-	1,818 1 6
			E. E., Balance in my favour - - *Rs.*		1,818 1 6

(True Copy.)

Simla, 16 May 1866.

(signed) *Geo. Plowden,*
Counsel for Sir William Mansfield, K.C.B., K.S.I.

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December, being entered subsequently. The 600 rupees, paid on October 28th, you will also find entered in this building account, which explains its non-appearance in the cash account.

But, for some reason best known to himself, the order of these two last payments is reversed; both also being shown as received in November, whereas the cheque for 600 rupees was drawn in October, the other, including the 1,000 rupees, in December. It is however clear that the proportion of the cheque for 3,000 rupees, drawn on the 13th of October, and credited to the building account, was 1,000 rupees, not 2,000 rupees as alleged.

You will thus see, gentlemen, that this entry in the cash account of 2,000 rupees, on the 13th October, is not inaccurate, but strictly correct both as to date and amount.

The cheque for 2,000 rupees, dated 3rd October, is entered in the September page, but the error is one of position only, the amount being correct. A reference to the list of cheques will prove also that the account correctly shows no receipt from His Excellency in November. This being explained by the fact that the Commander in Chief had left Simla in October, and during the month of November was travelling; Captain Jervis not being in attendance, and His Excellency's daily expenditure being managed by another officer, the prisoner not being accountable for the same.

Thus, the several items of receipts during the three months for which this account is made out, are correct in amount, the balance at the end of the last month being correctly shown to the credit of the Commander in Chief. And now, why were the 2,000 rupees, received on the 3rd October, entered in the September account? We are told by the prisoner that this receipt was put down in September, "not because it was received, but because, had his Excellency paid punctually, which he never did, it ought to have been received at the beginning of the month."

The Court will recollect that September was the first month of the prisoner's charge. Some of the circumstances of the transfer of the establishment to him by Captain Christie are already recorded in his Excellency's evidence, but what I am now going to relate is not stated there. It is however vouched for by the accounts themselves.

The prisoner, on taking overcharge, insisted on everything being paid. It was unusual to discharge the expenses of the current month during that month; but the arrangement seemed to be a business-like way of doing things, and His Excellency did not object. It thus happened that Captain Christie paid up all the bills he could collect, and discharged the demands for the current month, receiving money from the Commander in Chief sufficient for this purpose; a small balance only being left, which was handed over to the prisoner. Captain Christie's accounts for August will show this clearly. There are entered the Khansamah's account for July, the Khansamah's bill for August, Hossein Khan for July, Hossein Khan for August, Futtoorie Bunniah for July, Futtoorie Bunniah for August, as also servants' wages for August.

It is to be presumed, therefore, that Captain Jervis could have nothing, or next to nothing, to pay during the current month of September, the small cash balance being probably sufficient for petty disbursements; and that no demands were made upon him until the last day of the month had passed, when he applied for, and received a cheque for 2,000 rupees on account of the current month of October; the second payment in October being for the expenses of the half month (His Excellency left on the 15th), and for the discharge of al small bills on leaving Simla.

It thus appears that the statement of the prisoner in explanation of there being no expenditure in September, viz., that the September payments were entered in October, subject to future distribution, when the fair account was drawn up, and which he alleges as a sufficient proof that this does not profess to be a correct or complete account, has in reality no weight whatever, when viewed in the light of the explanation I have offered.

But again, this is not, as I will show, the rough cash account from which the real cash book was eventually to be made up.

If anything further is required to show this, than the continuous nature of the account itself,—each month's accounts, receipts, and expenditure being closed, balanced, and the balance being duly carried on,—it will be plainly apparent from an examination of the two books in question.

You will say, gentlemen, that the cash book handed in by the prisoner in his defence is blank, how then can it show anything at all?

This description of the book is not quite accurate. There are some leaves cut out of that book, with a memorandum in the prisoner's handwriting explaining what those leaves referred to. I will ask the Judge Advocate to read that memorandum, or I will read it myself:

"The pages taken out refer to the time during which Captain Christie had charge, and are written by the writer employed at that time, as will be seen by a reference to the pages themselves."

I am unable to comprehend the exact meaning of that memorandum. But one page of the book has not been cut out, and that page clearly indicates the character of the book, and the use to which it has been put. An examination of that page will show that the cash entries in this book were of the pettiest description, in fact that the book was a petty cash book, the totals of which, as would probably have appeared if the pages had not been removed, being carried into the general cash account, which is that book which has been before the Court from the first. But, in contradiction to the direct testimony of these two books, as apparent from Captain Christie's accounts, the prisoner would have the Court believe, by inference be it observed, not by a direct statement, that, without reason or explanation,

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explanation, the relation of these books has become suddenly reversed; that which was the petty cash book becoming the future general cash account, the established cash book being converted into a rough memorandum only of receipts and expenditure.

So much for the reasoning adduced by the prisoner. And now I will call upon you, gentlemen, to consider whether the conclusion I asked you to draw from this book, viz., that there was always a credit to his Excellency during the three months to which it refers, can with any show of reason be said to be erroneous.

But this is not all that the prisoner has to struggle against in his attempt to prove Sir William Mansfield's indebtedness to him. There is more than this. The prisoner has not only to get over the plain entries in the cash book, but he has to surmount the further fact that the books kept by his predecessors, and produced in Court, regularly, or with the most insignificant exceptions, show a balance, month after month, to Sir William Mansfield's credit. So that the Court is expected to believe that his Excellency, after showing himself for years at Bombay a most punctual paymaster, suddenly, after assuming the command of the whole armies of India, and on charge being given to Captain Jervis, reversing his system of years, took the opportunity to run into debt, deliberately, to his own aide-de-camp.

But lest it should be considered that there is a shadow of reason for believing that this indebtedness really did exist, I will read to the Court a note from the prisoner to Major Flood, dated the 5th of May, in answer to a request that the cash balance might be handed over:

"My dear Flood,

"The month of April, for which the last cheque was given, having expired, the balance could only be a small one, or the account may be a little overdrawn.

"My things are in such confusion from moving, that I have not been able to do anything to-day; to-morrow I will do what I can. But as I should wish to go very carefully through the accounts since 1st September, it must take more than 24 hours, as you will see.

"The house that is now building has cost more than Sir William's cheque for it and my payment, as also Christie's and Harbord's. This account I will complete and give you very shortly also. Everything in connection with this house I paid up to end of March.

"The cheque for the current month's expenses should be given on 1st of that month, when it can be banked and drawn upon for daily expenses.

"I am, moreover, I should remind you, single-handed, without a clerk; but I think I can manage, and will do my utmost to wind up everything as quickly as possible, agreeably to Sir William's wish, as conveyed in your note.

"Very truly yours,

5/5/66. (signed) "*Scott Jervis.*"

I have read the whole note, at the request of the Court, but it is to the first sentence that I would draw your attention.

Now, gentlemen, it is needless for me to comment on that note. Does it not clearly show that, if a large indebtedness did exist, there was no knowledge of it in the prisoner's mind when he wrote that note; and, moreover, may it not reasonably be inferred from the whole tenor of the statement that no such practice had, up to a late date, existed, of the prisoner's paying, on account of the Commander in Chief, large sums of money, without any available funds of his Excellency's at his disposal?

Is it credible that a person who knew that he had been constantly out of pocket on Sir William Mansfield's account, should, at the close of his service, entertain the impression that there might possibly be a balance to hand over to his successor? or that, if there were an overdraft, it would be a very small one?

But should it be said that at this time the accounts had not been made out, and that until this was done, the amount of the indebtedness, or even its existence at all, was not disclosed, I will beg of the Court to remember that, on the supposed large indebtedness of his Excellency to him, the prisoner has endeavoured to build up his justification of a practice which, in his own words, is described as "suffering his Excellency to give me credit for a few hundred rupees."

I submit, therefore, to the Court (however, protesting against the relevancy of the prisoner's argument) that the evidence before the Court decidedly points to the conclusion, that the Commander in Chief was not in the prisoner's debt; but, inasmuch as the sole evidence by which the question could be conclusively solved is withheld by the prisoner, after due notice to produce it, it is a clear case for the application of the legal maxim which I referred to at the opening of this address—"contra spoliatorem omnia præsumuntur."* And I have no hesitation in calling on the Court to presume against the prisoner, that the statement

* Extract from Broom's "Legal Maxims" read to the Court:—"*Omnia præsumuntur contra spoliatorem*—Every presumption is made against a wrong doer."

"If a man, by his own tortuous act, withhold the evidence by which the nature of his case would be made manifest, every presumption to his disadvantage will be adopted. Where a party has the means in his power of rebutting and explaining the evidence adduced against him, if it does not tend to the truth, the omission to do so furnishes a strong inference against him. Thus, where a person has wrongfully converted property will not produce it, it shall be presumed, as against him to be of the best description."

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statement he has made, as to Sir William Mansfield's indebtedness to him, is altogether untrue.

I now come to the matters which are in some degree relevant, and I propose to consider the question, whether there was any express or implied rule of the Commander in Chief's establishment, which permitted a member of the staff to borrow the stores of his Excellency, or to order goods on his credit. As to the stores, the evidence is all one way. Sir William Mansfield and Major Flood (Captain Jervis's predecessor in Bombay in the management of his Excellency's household) have distinctly sworn that there was no such rule; in fact, that there was one to the contrary. That it was fully understood that the privileges of an aide-de-camp were solely those of a guest, and were confined to the indulgence of living at the Commander in Chief's table. That it was not permitted to them to draw on his Excellency's cellars for wines and stores for their own use, when living out of the house, or for their private entertainments; this point is very clearly given by Major Flood.

As to the power of ordering goods on the Commander in Chief's credit, I will not insult the good sense of the Court by dwelling on this point. I merely call the attention of the Court to the fact, that much of the defence amounts to the claim of a right, on the part of an aide-de-camp, of whatever age, to pledge the credit of the Commander in Chief to any extent. The Commander in Chief taking the risk of his willingness, or ability, to repay or replace the articles purchased.

That there was no rule of the establishment which authorised the appropriation is abundantly clear. But I now come to the question, whether any practice existed in the household which can possibly have led the prisoner to believe that he was justified in making the abstractions which he now admits. Now, the first observation which here occurs, is this: What might have been expected to have been the prisoner's conduct, if he had been aware of the existence of the practice on which he relies? His sole claim on the consideration of the Commander in Chief consisted in his being believed to be an excellent man of business. He was the sedulous counsellor of economy to his Excellency.

Is it credible that, if he had discovered the practice in question, he would not have instantly condemned it, and disclosed its existence to Sir William Mansfield? For the practice was one which, according to his own account, authorised the abstraction, by an aide-de-camp, of dozens of wine at a time, on condition of his replacing, at pleasure, an equivalent quantity of what he might imagine to be the same liquor. It is not too much to say, that such a household, if it escaped insolvency, would be a very model of bad management. But the prisoner, who prides himself on his powers of managing a household efficiently and economically, would have the Court believe that he knew of, approved of, and availed himself of, such a practice as I have described. But now let us consider whether, in fact, there was such a practice.

The prisoner in his defence talks of a "system, custom," or "practice," under which mutton and horse-shoes were sold to officers, the recoveries for the latter being made at long intervals; and, in support of his argument, he goes on to state that "the books adduced during the prosecution showed items of sherry, gram, and some other things, besides regular charges for mutton, distributed to officers for payment."

These books the Court will remember have been carefully and critically examined by the Commander in Chief and Major Flood, in whose hands they were placed. They show the accounts continuously from the 1st of August 1860 up to the 30th November last. Now all issues, other than for his Excellency's table, and all recoveries from any persons to whom such issues might have been made, have been specially recorded in the proceedings. I have carefully examined all the evidence on the point, and besides the mutton, the horse-shoes, and the solitary instance of gram, referred to by Major Flood, as given on payment to Dr. Hadaway as a temporary convenience, when it had to be brought from a distance of 20 miles; besides these things, I am unable to discover any others, so that the "some other things" given on payment, alluded to by the prisoner, are altogether imaginary. There is indeed a single instance in which a tin of bacon was lent to Colonel Phayre; but the very nature of this entry, the care with which the circumstance was noted in the consumption book, show the altogether exceptional character of the transaction. The prisoner, however, says that items of sherry appear in these books as distributed to officers on payment. There are only two occasions where the alienation of wines from the Commander in Chief's cellar is referred to in the books. Once an entry of the receipt from Mr. Mansfield, Sir William Mansfield's brother, of one dozen of champagne; the other is a credit on account of the sale of eight dozens of sherry at 25 rupees. Now, on the strength of the latter entry, the prisoner, with a view to showing that there was a custom or practice of alienating wine from the cellar, alleges that items of sherry are shown as distributed to officers for payment. The prisoner, first of all, talks of "items," when he ought to speak of "an item," and he obviously wishes it to be understood that the book shows the sherry to have been borrowed by an officer of the staff, but I beg the Court to look at the book, It will find that no officer's name is mentioned at all, and I ask the Court further to notice the price attributed to the wine. The natural and probable, indeed the all but certain conclusion is, that a quantity of inferior wine, which had not been approved of, was sold in the bazar at a low rate. It is only necessary to look at the book to convince oneself that if an officer had been the purchaser, that officer's name would have been shown. The argument built on this example is not very ingenuous, but whatever value it might possess is destroyed by the fact that the instance occurred during the prisoner's incumbency.

I have gone into these details at more length than would otherwise have been required, because it was necessary to show the extreme carelessness of assertion, in total opposition to

to the facts, which the prisoner has not hesitated to adopt with a view to benefit his case. 16 August 1866.

Putting aside the supply of superfluous quarters of mutton (which of course in an Indian climate would otherwise have been spoilt), and the convenience of having their horses shod by the Commander in Chief's nalbund, accorded to a few of his Excellency's intimate friends, the analogy of which to the disbursement on payment of wines and stores, the Court will, I venture to think, not for a moment entertain, there remain but two solitary instances during a period of five and a half years, in which anything whatever appears to have been alienated for the use of officers, one only of these two items being shown to be on payment. These are, once some gram to Dr. Hadaway; once a tin of bacon to Colonel Phayre.

And this is the evidence of which the prisoner speaks in the following terms: "The prosecution has again in this instance also furnished proof of this practice, and rendered it unnecessary in me to summon the witnesses whom I first named." And he goes on to say, "As an additional proof of the custom, I have brought another book, ranging from 1861 to 1865, and kept by Colonel Kirby and Major Flood, which shows the long continuation of the practice of supplying mutton for payment, at a considerable profit, sheep being purchased at three rupees, and sold to four or five different officers at nine rupees."

I pass over the allegation of profit as too absurd; every one knows the difference in value between a sheep that has been fed on gram, and one scarcely fed at all. To have asked an officer to pay 12 annas for a quarter of gram-fed mutton would have been equivalent to precluding him from accepting the favour twice on the same conditions. But this book is of very great importance to the prosecution, and I solicit the Court, when it has to consider some of the boldest assertions of the prisoner, to inspect and examine it carefully. It contains an accurate record of every sheep killed, and of every quarter supplied to each individual; in fact, it is a complete voucher of the transaction. The prisoner, in the exercise of that power, which he enjoys, of bringing before the Court exactly what evidence he pleases, has thus furnished an incontrovertible answer to the suggestion made by himself, that on any date previous to the recoveries on account of such supplies (and I here quote his own words) "a charge of malversation might have been brought against the manager of the establishment, on precisely the same grounds as those on which I am now arraigned."

I think, gentlemen, I have shown that there was no such practice as the prisoner would have you believe, and which, by his account, proved his innocent intention. And I must add that even if the petty instances of neighbourly accommodation referred to were less intelligible than they are, it would still be impossible to persuade oneself that the prisoner really found in them the moral justification for his wholesale appropriations. In a case like this, quantity is of the utmost importance, and this is the proper place for examining the question which the prisoner has raised as to the exact quantity of stores he did abstract. It is scarcely necessary to remind the Court that in a case where the greatest part of the evidence on which the charges could be framed is advisedly kept back by the prisoner, some laxity of statement must be condoned to the prosecution. I must, however, ask the Court to observe how, as a question of evidence, stands the case as to the appropriation of wines and stores. It is proved, as regards the wine, that, between certain dates, a certain quantity of wine disappeared.

The prisoner admits that he abstracted a certain portion of this wine. But who is the person who alone can conclusively prove what quantity of wine was taken? It is the prisoner himself. It was his duty to have in possession books which would have shown this; books like that one handed in by him, which I have just commented on, showing not only a journal of all movements of the household, but a complete and continuous memorandum of all transactions in wines, stores, mutton, &c. He must be assumed to have those books, but he declines to produce them. In such a state of facts, I again call on the Court to apply the maxim of law, which says that all presumption must be made against the suppressor of evidence; and I ask you, gentlemen, to presume against the prisoner that he abstracted the largest quantity of wine, the disappearance of which there is evidence to show.

It would be simply sufficient for me to rely, as to this point, on the legal presumption; but here again, as in the case of Sir William Mansfield's alleged indebtedness to the prisoner, I will show that the evidence before the Court does not support, but contradicts the prisoner's construction of the facts; and here, first of all, it is proper to remark on the light in which the evidence of the Abdar has been represented by the prisoner. His evidence was read to the Court at length in the defence; I will not trouble you, gentlemen, by going over it again, but I will say that there is not a shadow of foundation for affirming, as the prisoner does, that the written memorandum in possession of the Court, made at the time, was "a random statement about 33 dozens of sorts," adding that he does not imagine the Court will regard such testimony as altogether reliable. Certainly, the whole particulars of the wines, which the Abdar positively states were sent out to Mahasoo on four different occasions are not recorded in the memorandum. It will be remembered that the Abdar's daily notes of all wine that left the cellar were given to the prisoner; and here again I will assert that he, and he alone, is in a position to show exactly what he did take. He acknowledges only the abstraction of the amounts entered in the wine books on dates when such a consumption could not be accounted for at the Commander in Chief's table. But is this bare admission, given only when the fact had been proved before the Court, sufficient to invalidate the testimony of the Abdar, testimony which, at the time it was given, was not challenged,

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But the prisoner goes on to state that the first instance of the first charge alleges that not only were these wines dishonestly misappropriated, but that they were entered in the household books with intent to defraud the Commander in Chief. He continues, "His Excellency himself produced the books which contain the only entry of these things," and read out the entries. "These entries do not contain one-tenth of the articles which I am charged with stealing."

It is scarcely necessary for me to remind the Court that the charge has been incorrectly quoted. The charge alleges that part only of the wines misappropriated were entered in the books. I am willing to believe that the erroneous reading is one not of intention, but of accident, and I should not have thought it worth while to advert to the subject were it not that the prisoner has made use of the circumstance to throw discredit on the prosecution.

But there is another point which directly bears out the presumption that large quantities did go out. It is on record that the entertainments given at Mahasoo were numerous.

The Khansamah has given a list of large bills for tiffins or dinners supplied on some eight occasions, amounting to 307 rupees; the quantity of wine consumed must therefore have been very considerable, and still it has been shown that there was some remaining when the house at Mahasoo was shut up, which remnant was finally removed to Major Innes's house in May last, where the prisoner was staying after he had been displaced from the Commander in Chief's staff.

Independently, therefore, of the legal presumption, I affirm that there is trustworthy evidence before the Court that much larger quantities were taken by the prisoner than appear in the books. That larger quantities disappeared is certain; for the entries of October the 2nd and 4th show a consumption of wine which could not have taken place on the Commander in Chief's account. I submit therefore to the Court that the true explanation of the facts is, that there was a doubt in the prisoner's mind how these large abstractions were to be accounted for; and in connection with this point, I would call the attention of the Court to the remarkable fact, that the October pages of the consumption book are not closed or balanced, but left open; and this notwithstanding that the daily entries are completed to a later date than that of his Excellency's departure from Simla.

The prisoner calls upon the Court to discredit the Abdar's statement, with what show of reason I must leave you, gentlemen, to decide.

Before I quit this branch of the subject, I would notice one more point, not in itself important, but illustrative of the prisoner's recklessness of assertion. He says, "The social propensities of my fellow aides-de-camp, and not my own, suggested the entertainments at Mahasoo. Their friends principally, and but few of mine, were the guests invited." Now Captain Harbord is the only witness who has given any evidence as to these joint entertainments, and he says that on two occasions he joined in giving them, and that no other member of his Excellency's staff joined in them, to his knowledge.

A question was indeed put to Sir William Mansfield in cross-examination, as follows:—"*Q.* Is your Excellency aware that Captain Christie also joined in giving the parties at Mahasoo in October last?" His Excellency's reply to the question is significant: "No, I am not."

But a suggestion of untruth runs through so many of the prisoner's questions, that I submit that this does not add one iota to the presumption that Captain Christie, the only other aide-de-camp, did join in the picnics; or that it detracts in the slightest from the evidences that he did not.

Having now established, I think, that the prisoner did abstract very considerable quantities of wine from his Excellency's cellar, I repeat the observation which I made before, that quantity in this case is of the utmost importance; and I have to ask you, gentlemen, whether we can persuade ourselves that, even were the petty instances of borrowing contained in the books not capable of being explained independently, they could possibly have led the prisoner to believe that he might take what he did take. Can he have honestly argued from a tin of bacon to some dozens of wine, not to speak of other stores in considerable quantity. Like most of the points in the case, it is a question for every man's common sense.

But I now approach the most serious point of all; the absence of refund or recovery on the part of the prisoner, or of any entry in his books or papers charging himself with these stores, or their value. He asserts that he intended, subsequently, to charge himself with his appropriations, whenever he completed his accounts; but the admission he has made must be taken most strongly against him, and it must be assumed that there is not in any single paper or book belonging to the prisoner any entry of these appropriations. If such an entry had existed, there is no moral doubt that it would have been brought to the knowledge of the Court. So far as evidence is accessible to the prosecution, the books in our possession show that the entries (the entries of 2nd and 4th October) are made, just as they would be made if the wine and stores had been consumed by the Commander in Chief himself. The appropriation of stores by the prisoner, I have been obliged to prove by independent testimony.

The entire omission on the part of the prisoner of any sort of acknowledgment of his abstractions: I must first of all ask the Court to contrast with what would have been his conduct as a man of business, if so large a quantity of stores had passed into the hands of anybody

anybody but himself; next, I beg to have it contrasted with the scrupulous care with which the fact of so insignificant a loan as a tin of bacon was entered in the consumption book by a former officer in charge of the house; and lastly, I will attempt to illustrate the inferences to which it points by putting a hypothetical case. Let us assume that one man has gone into the house of another, and has taken from it some valuable article, such as a watch or an article of clothing. In itself the act is highly suspicious, and the burden of proving that the intention with which it was done was innocent, rests entirely on the taker; still it may afterwards turn out that the relation of the parties was such as to reduce the act to the footing of a liberty taken with a friend or acquaintance. But, on what conditions will the taker of the property establish his innocence? Surely the most indispensable condition would be his charging himself with the act he had done, and moreover his charging himself with all possible promptitude. He would, without delay, inform his friend of what he has done; and if the opportunity offered itself of doing so, he would seize it with eagerness. If he delayed an inordinate time, or omitted to avail himself of opportunities of explanation, the most charitable conclusion would hardly acquit him of dishonesty. 16 August 1866.

The Court will therefore see that acknowledgments of acts like these, and moreover prompt acknowledgments, are essential to the proof of innocent intention; but here the prisoner admits that months have elapsed without recovery or acknowledgment, though it was clearly his duty, merely as a matter of business, to make some entry in his papers which would show where the stores had gone, if only against the contingency of his own illness or death. Even if it be true that he had no time to complete his accounts, he must at all events have had some book or paper in which the acknowledgment would be made. Why, in fact, did he not enter his name in the consumption book (which is in evidence) as the person to whom the stores were issued? In the corresponding books for former years, as the Court has seen, the officer in charge of the household has regularly entered the name of the recipient against the entry, even when the smallest article has been borrowed. Now these are the very books which the prisoner has referred to as creating, in his own mind, an impression that he might with propriety, and in accordance with custom, make the appropriations charged against him. Whether such an impression can possibly have existed, it is for the Court to decide. But at any rate, on his own admission, the prisoner adopted only a part of the alleged practice. He borrowed the stores, but omitted to imitate the entry by which the borrower could be traced. Nor have opportunities of personally stating to the Commander in Chief what he had done, been wanting. It is one instance of the singular obliquity of moral view which the prisoner has exhibited, that he cites the fact of his entertaining the Commander in Chief at Mahasoo, as evidence of innocent intention. I submit that the proper inference is the other way. If ever there was a natural opportunity for stating to Sir William Mansfield what had been done, it was when the prisoner was entertaining his Excellency at Mahasoo with his own wines and stores. I do not deem it necessary to dwell on the prisoner's argument which he has pressed upon the Court, that the abstraction was attended by publicity. The servants would not have dared to disobey any order given to them by Captain Jervis, nor was it for them to question his authority to dispose, as he might choose, of the property under his charge. The relation between the prisoner and the Commander in Chief was one of such confidence that it was not likely the removal of stores would attract the smallest attention; and who was to suppose that he was not acting with the full authority and sanction of the Commander in Chief, if indeed it ever occurred to any one to trouble himself with the thought? and in fact, as the Court knows, the abstraction would never have been discovered but for other occurrences. As to the argument that the prisoner might easily have inserted false acknowledgments in the books, if he pleased; for he says, "May I not ask then, gentlemen, when I saw such an obvious determination to bring matters of accusation against me, if I had really been conscious of having misappropriated these eatables, what was there to prevent me, with a few strokes of the pen, from adding at the foot of that very account [the cash account] in November, or in the succeeding month, recoveries on account of these things, and thereby at once concealing my peculation for all future time, and preventing either accusation or scandal." In answer to this argument, gentlemen, I have only to observe that it is no part of the case for the prosecution to charge Captain Jervis with forgery.

The next point for consideration is the validity of the reasons adduced by the prisoner why it was both advisable and advantageous that both wines and stores should be disposed of. Of the stores, it is said by the prisoner that they were old, he himself having purchased them in Bombay nearly two years before. Of the wines, that they had been bought in Simla for the ball which his Excellency gave in September. It was the end of the season. Sir William Mansfield was about to leave Barnes Court and move into Woodville, where there was little or no godown accommodation.

Now it happens that both wine and stores were at a remarkably low ebb. So much so, that it was necessary to purchase stores from the Upper India Commercial Association during the months of September and October, to the extent of over 900 rupees, and for some months past wines had to be purchased, as required, either in Simla or Calcutta. The fact was, that owing to his Excellency's transfer from Bombay to the chief command of the army, arrangements had not been effected for regular supplies from England, the first of which were to await the Commander in Chief's arrival in Calcutta. The books, balanced up to 30th September, will show the several receipts from Simla and Calcutta tradesmen, as also the actual state of the cellar and store-room; and a glance at the row of figures will prove that the quantities in store were not such as to authorise a wholesale withdrawal.

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withdrawal. The figures will farther show that the amount of room required for their storage was insignificant. But, in fact, there could have been no more unfortunate example of articles which there is convenience in consuming than wine and preserved provisions in tins, since one class of articles improves, and the other is not deteriorated, by keeping.

I have now almost concluded my examination of the prisoner's defence on the first and 3rd instances of the first charge, but before finishing it I must advert for a few moments to Monteith's, and the other bills, which have been discussed at some length during the trial. I have said, gentlemen, that I will not insult the good sense of the Court by premising that a system could exist by which an aide-de-camp was justified in pledging the Commander in Chief's credit to the extent of hundreds of rupees, without check or limit, the refunds in money or kind being made at the aide-de-camp's pleasure and convenience. But the prisoner has attempted to show that such a system did exist, and I must ask you to follow me in the examination of his arguments. The bills adduced by the prisoner are three: the Umballa hotel bill, Lazarus & Co.'s bill for furniture supplied during last cold weather, and Mackenzie Lyall's bill.

The first and last are already recorded as part of the proceedings. Lazarus's bill, the Court was moved by the prisoner to request the Commander in Chief to produce, but the application was afterwards withdrawn. Now the circumstances connected with the Umballa hotel bill have been fully laid before the Court, which I believe quite understands how it came that Captains Harbord and Christie's shares were included in the bill, the refunds having been made at the time, and credited to his Excellency during the same month as the bill was incurred. But there is really no analogy between this hotel bill and the Calcutta tradesmen' bills, so I will at once dismiss it from consideration. There remain, then, Lazarus's and Mackenzie Lyall's bills, as showing a system on which Captain Jervis considered himself authorised to order stable gear from Monteith & Co., for his own use, to the amount of 275 rupees, and to have the same charged to the Commander in Chief. I say ordering for himself, and charging to the Commander in Chief, for I must beg of the Court to bear in mind that this is not an instance of simply using for his own purposes what had been originally ordered for his Excellency, and was in his Excellency's store-rooms, but it was a deliberate order, given in the Commander in Chief's name, for an amount of gear above the requirements of his Excellency's six horses, in order that Captain Jervis's six horses might be supplied at his Excellency's charge.

Now what peculiarity is there in Mackenzie Lyall's bill, which is to prove this system of allowing the Commander in Chief's credit to be pledged for his aide-de-camp's requirements? We are told that one of the bronzes and air pillows, entered in that account, are the prisoner's, and in his possession to this day. Gentlemen, that bill has been paid within the last few weeks by the Commander in Chief, as he has stated in his evidence, without any deduction whatever, and if its record in the proceedings of this Court is of any value at all, that value must clearly be to show the result of a system instituted by the prisoner (its previous existence never having been even whispered, until it was suggested by himself), a system under which it is possible, consequent on an accident, that the Commander in Chief should pay for goods represented as having been supplied to him, but which in reality had been ordered and received by another. Further, it is of value to show that, when the prisoner was brought to trial, the extent of his malversation was unknown; and it affords an example of the moral blindness of the man who, to justify one act of dishonesty, quotes another, and a similar one, previously unknown; the only possible result of the disclosure being to show that there were grounds for arraigning him on another charge, had the acts now disclosed come to light sooner. So far from proving the pre-existence of such a system as this, it only shows more clearly the character of the prisoner's own transactions. For while the purchases of another aide-de-camp, who also accompanied the Commander in Chief to the shop on the 17th of January, were put down in a separate bill, the prisoner now tells us his own were included in the Commander in Chief's account; for what does Major Gordon say on the subject?

"*Q.* Were you present at Mackenzie, Lyall, & Co.'s when any of the things appearing in this bill were bought?—*A.* Yes, I was, when the Japanese articles were purchased, about January 17th. I happen to know that I was present on that date from seeing the articles specified here.

"*Q.* What occurred on that occasion?—*A.* The Commander in Chief bought these things, so far as I can recollect. I gather so from seeing they are charged to him, as well as knowing several of the articles, and seeing them when purchased. Captains Christie and Jervis were present there. Captain Christie made purchases then, and I saw him tell the man to charge them to him."

Gentlemen, from such a system as this, which was clearly established by the prisoner, I must leave you to draw your own conclusions.

But this is not all. There is another circumstance of great moment, one passed over in silence by the prisoner, but which must be noticed here. It is on record in the evidence, that the prisoner, during the last cold weather, dealt with Monteith & Co. on his own account; that he had boots made there; and since boots are not included in the Commander in Chief's bill, it is reasonable to suppose that boots were not ordered in his Excellency's name. And if anything were wanting to complete this testimony, which is sufficiently clear and decided in itself, there is a telegram from Monteith, produced at the prisoner's request, stating—"Yes, Captain Jervis has an account with us for goods supplied him last cold season in his own name."

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The prisoner might have told us why he had the horse clothing put down to the Commander in Chief's name, and the boots to his own, but he has not done so. The explanation may be found in a theory of the prisoner's, which we have before discussed, but which we may here again refer to, and this is, that if he paid large sums of money out of his own resources, he did not think, even looking at it as a mere matter of business, that he was committing any very heinous offence in suffering his Excellency to give him credit for a few hundred rupees.

Now, if the prisoner did pay large sums for the Commander in Chief out of his own resources, it was clearly without the Commander in Chief's knowledge, for he tells us (with what show of reason I have already discussed) that, when shown a list of these bills, his Excellency exclaimed, "Why, you must have paid them out of your own money."

We have, then, an example of the prisoner's method of business: first, to deliberately place the Commander in Chief in his debt, by paying bills for him out of his own pocket, without his Excellency's knowledge, and then to repay himself by ordering goods in the Commander in Chief's name. But one side of this extraordinary debtor and creditor account being demolished—(for has it not been shown, gentlemen, that there are no grounds even for presuming that the Commander in Chief ever has been in the prisoner's debt)—one side of the account being shown not to exist, what form must the other side take? In what light must the pretended repayment be regarded? What, but a fraud deliberately practised on the Commander in Chief, under the impression that it would never be discovered. And if there is anything wanting to complete the picture of the transaction, it is this, that the prisoner, when compelled with great reluctance to hand over charge of the stable to Major Gordon, informed him that there was a large bill due to Monteith, but without the slightest intimation that out of that bill goods to the amount of 275 rupees had been appropriated by himself; and it is only necessary to read the cross-examination of Major Gordon to see that the prisoner strove hard to prove that, without that bill, he could not possibly re-credit the Commander in Chief with the value of such stores. Still, and how clearly negative of any honest intention is the fact, he steadily refused to have anything to say to that bill, even to receive it from Monteith, and concluded by saying that he should write to Monteith to send it to Major Gordon; the result being that it was received direct by Major Gordon, and has never been in the prisoner's hands at all.

Gentlemen, I must now leave this subject, and pass on to a brief review of the remaining instances of the same charge. The character of these is somewhat different from that of the other two instances. The prisoner is taxed with having charged to the Commander in Chief his own private table and travelling expenses. I will first take the latter, the facts of which are now fully admitted by the prisoner. I say they are fully admitted, but I would beg the Court to observe that they were previously fully and incontrovertibly proved.

The defence on this charge consists in an assertion that, for the purpose of preserving the record of the travelling charges, the prisoner authorised their intermediate entry in the bazaar expenses book; and it is attempted to show a parallel to this in the matter of the Umballa hotel bill, by the manner in which that bill was charged and settled. The circumstances of this Umballa bill have been so often before the Court, that I should waste your time, gentlemen, if I were to refer to them at length. Here again I must ask the Court to look carefully at the books, and to draw its own inferences from ocular inspection. In one book there is a clear entry in the cash account on one page, and refunds from the two officers whose bills had been included are shown on the opposite page. There is no analogy whatever between this accuracy of detail and an anonymous entry in the book devoted solely to the record of bazaar purchases for his Excellency's table; this anonymous entry not being coupled with any, even the slightest, indication that the expenses charged had no sort of connection with the book in which they were entered. And this absence of all detail, the fact of these travelling expenses being included in the general total for the month, this total being again included in the general petty cash account, without any note in that petty cash account to show that one of its items contained charges not agreeing with the specification of that item, and not incurred on his Excellency's account—all this, I submit, goes to show, incontestably, that the settlement of that account was regarded as final, and to refute the prisoner's statement that the entry of the travelling expenses in that book at all was simply to preserve the record of those charges. In point of fact, if the mode of entry were considered as a means of refreshing the memory, its distinct tendency would be to baffle the recollection, and not to assist it.

The prisoner, however, alleges that he allowed the several small bills to be paid by Abbey in the first instance, subject to adjustment and recovery when the account should be made up.

I ask you, gentlemen, whether the course pursued was the proper or natural way of carrying out this supposed intention? Whether the entry of the sums without deduction in the bazaar book, their being totalled up in the whole month's accounts, the carrying on of this total to the petty cash account of the month, the character of the charge being thus hopelessly disguised,—can be regarded by any reasonable man as steps leading up to, or in the direction of, adjustment and recovery? Now, what would have been the natural course to pursue if the prisoner had had the contrary intention to that which we attribute to him, and if it had not been his design to charge the Commander in Chief with the cost of his travelling? The proportion of the bill due to Abbey's expenses is proved to have been insignificant; five minutes' examination of the bills would have shown the amount. What then

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then would have been simpler, more natural, than to have instructed Abbey to have the small proportion due to his own expenses charged in the Commander in Chief's petty cash account, the balance, viz., Captain Jervis's expenses, being entered in the private account, which it is proved was at this very time kept between the prisoner and Abbey? Gentlemen, both the Commander in Chief's account, and the private account for that month of March, are recorded in these proceedings; a glance at the two accounts will, I am confident, convince you that nothing could have been easier, nothing would have occurred to the mind more naturally, than this final adjustment of the travelling expenses; and a glance will also show you the simplicity of this course, when contrasted with the extraordinary expedient of incorporating the whole amount in the Commander in Chief's books and accounts, with a view, as the prisoner would have you believe, of subsequent adjustment and recovery.

And I now come to a point in this case which the prisoner directly denies. So far as the testimony of Abbey is borne out by indisputable documentary evidence, to this extent, the prisoner admits its correctness; but the moment the record against him rests on the oath of the witness alone, he does not hesitate to deny its veracity, and this on his own unsupported assertion. Abbey's statement is, that after receiving a positive and unmistakable instruction to enter the travelling expenses in the bazaar expense book, he tore up, in Captain Jervis's presence, the memoranda and bills as no further required. The argument which the prosecution bases on this evidence will strike the Court at once. If the witness is to be believed when he says that he tore up these papers in Captain Jervis's presence, the incident goes far to show the finality of the entry in the bazaar book, and the intention with which the direction to make it was given. On the other hand, if Captain Jervis had really wished these roadside bills and memoranda to be retained (for some of them were not bills or receipts at all, but simply memoranda), would he not have specially instructed Abbey to retain them, or give them to him (Captain Jervis)? Would he not, at all events, if there had been any intention to refund, and to adjust the charges then entered against the Commander in Chief, have soon after discovered the non-existence of the memoranda? But I pray you to observe, gentlemen, that the prisoner did not even attempt to cross-examine the witness on these points. One would have expected that if he did ask Abbey for the papers, he would have inevitably attempted to get the truth out of him. But instead of taking this course, and after, you will recollect, fully admitting the correctness of Abbey's evidence at every point where there was a document to corroborate it, the prisoner calls upon you, gentlemen, to say whether Abbey's evidence is worthy of credit! He asserts that the fact of his having contradicted himself again and again is patent in the face of his deposition, and he affirms that the account given to his Excellency on the 14th May, as to the destruction of the bills, differs *toto cœlo* from his evidence on the point before this Court.

Gentlemen, I have examined both depositions carefully, and I cannot detect the slightest contradiction or incompatibility in this respect. The prisoner's questions in cross-examination certainly suggest a contradiction; and the fact is, he has resorted to the somewhat disingenuous expedient of attempting to discredit this witness, not by means of his answers, but by means of the questions put to him. But I assert that it is the questions, and not the answers, in this instance as in many others, which contain the suggestion of untruth. The device is so flimsy that it is not worth exposing. I only beg, gentlemen, that when you come to the consideration of the point, you will give the whole of Abbey's evidence, questions as well as answers, some degree of minute attention; and that you will remember the challenge which I now offer to the prisoner's allegations of repeated contradiction. And now, the commonest feeling of duty and sense of justice forbid my passing over in silence the opprobrious and abusive terms which have been heaped upon this witness, Abbey, and the repeated application of the words "menial" and "creature" to a man against whom, when the language of the defence is sifted, there is nothing worse to allege than that he dared to bring to the notice of his master what he considered the irregularities of his superior. Gentlemen, it would be a deep dishonour to military courts if, when the legitimate means of shaking the credit of a witness were wanting, they allowed it to be weakened by epithets which appear to be taken from the dialogue of minor melodrama. You, gentlemen, certainly observed that the attempt to impeach Abbey's veracity by cross-examination broke down almost ludicrously. As to his past character, it is, at all events, fair to say that, in the absence of all evidence, we are not even entitled to suggest that he was ever in his life in a position in which his criminality was a *primâ facie* presumption of law. On the contrary, in the presence of this Court, which includes an officer of his own regiment, able to contradict his statement, he was able to say that he had passed with perfectly unstained name to the highest position ordinarily open to a soldier; and none know better than you, gentlemen, what a power of resistance to temptation that uncontradicted statement implies. Further, you know from his evidence, also uncontradicted, that before entering Sir William Mansfield's service, he was offered a civil post, in which his trustworthiness was a matter of much importance to a great part of the community of Simla. If he is not trusty and veracious, those who selected him for that office must have been greatly mistaken in their estimate of the evidences of character, and of all persons in the world the observation applies most strongly to the prisoner, for it was he who personally selected him for the situation he now occupies.

The last point connected with the first charge now remains for consideration. On this the only evidence available to the prosecution is that of the khansamah. The Court will remember that during the examination of this witness, when he stated that the accounts of the Mahasoo expenditure were in Captain Jervis's possession, and that if Captain Jervis

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was asked for them he could produce them, the prisoner promised to produce the accounts, which he acknowledged to be in his possession. I will read this portion of the proceedings to the Court:

"By *Prisoner*.—I shall be happy to show the fair copies of the accounts to the Court. They are made out in English. The original, in the native character, should be in the possession of the witness or his moonshee."

"*Q*. Have you in your possession any memorandum of the amount of the bill on account of the Mahasoo expenditure?—*A*. Yes. I have the totals of four or five days' expenditure of the meals served at Mahasoo. I have no paper or account showing the entire expenditure, because two sundry books (Simla), one dinner book (Simla), containing the dinner accounts of his Excellency, Captain Jervis took to look at, and retained. Two sundry books containing cash expenditure, on one page of which his Excellency's expenditure was entered, on the other or succeeding page Captain Jervis's, and so on. There are also in Captain Jervis's possession six or seven bills, filed. They were taken from me on the night of the 14th November 1865, a little after nine o'clock. Captain Jervis locked them up, paid me some money, and said he would settle the balance of accounts in Calcutta. Captain Jervis on that night gave me a cheque for 1,292 rupees on Calcutta, and another cheque for 400 rupees on the Simla Bank."

"Captain Jervis said he had no more money, as his Excellency had not paid the accounts, and that what he (Captain Jervis) had paid was from his own private funds, with the exception of the 400 rupees."

And this is the remark of the Court on the following day: "The Court also take this opportunity of reminding the prisoner of his offer, as recorded in the proceedings of yesterday, to produce the Khansamah's account of the Mahasoo expenditure." The Court is opened, and the above read out.

"By *Prisoner*.] I would sooner withhold the accounts until the defence. I do not wish to assist the prosecution. That is my only object in withholding the papers."

Now, gentlemen, considering that the prisoner did not give in those accounts when the Khansamah was under examination, that he failed to fulfil his promise to produce them—a promise of which the Court found it necessary to remind him, while the witness who alone could challenge or explain them was still before the Court—considering also that the prisoner had committed himself to the perhaps somewhat incautious statement that his only reason for not producing those accounts during the examination of the Khansamah was, that he did not wish to assist the prosecution,—I concluded, gentlemen, that there might be some information in these papers which would throw some light upon the case.

These accounts were produced by the prisoner in his defence; and what he says about them I will give to the Court in his own words:—"I am about to show to the Court the Khansamah's bazaar account for his Excellency's expenses, as well as the Khansamah's bazaar account for my own expenses at Mahasoo; each drawn out separately, with a memorandum of mine, written at the time they were presented and paid."

I confess, gentlemen, that in consequence of the prisoner's proceedings and statements in connection with these papers, I studied them somewhat critically, perhaps more so than I might have otherwise done. The result of my examination I feel my duty to lay before the Court.

The prisoner says that these two accounts * (A, B), the Commander in Chief's and his own, are each drawn out separately. There is clearly therefore no connection between the two. What, then, is the meaning of the memorandum by the prisoner on the Commander

* (A.)

His Excellency the Commander in Chief.			*Dr.*
			Rs. a. p.
Poorjees for September 1865 - -	Paid, 14/11/65, *Rs.* 1,692. *S. J.* (signed)	–	245 14 8
Ditto - October „ - -		–	303 8 –
		–	549 6 8
Khansamah's daily account for October.		–	301 9 11
Oil bill for September - - -		–	158 2 –
Ditto - October - - -		–	71 – –
Wages of servants for September and October.		–	612 2 6
TOTAL - - -		*Rs.*	1,692 5 1
			400 – –
		Rs.	1,292 5 1

(B.)

Captain Scott Jervis.	*Dr.*
Daily account of Hossein Khan, Khansamah, for the months of September and October 1865:	*Rs. a. p.*
Poorjees for September 1865 -	81 12 –
Ditto - October - -	40 5 –
	122 1 –
Daily account of Khansamah for September.	74 14 –
Daily account of Khansamah for October.	211 11 2
TOTAL - - - *Rs.*	408 10 2

Out of this deduct *Rs.* 408. 10. 4, being amount of my bills. Remainder paid on account of Commander in Chief. I have still a bill due of about 177 rupees for August, omitted to be paid. There is also one bill for coolies, not paid, of Commander in Chief, of about 195 rupees likewise for August.

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mander in Chief's account, which he tells us was written at the time they were presented and paid? I will read this memorandum (*read memorandum*). That is, that from the amount of the Commander in Chief's bill was to be deducted a sum of 408 rupees on account of the prisoner's own bills; which bills, by his own showing, were made out separately, and had therefore nothing to say to the Commander in Chief's account.

The extreme accuracy of the Khansamah's evidence is of the utmost importance in this case, as exemplified in the Commander in Chief's account. There is the total of 1,692 rupees, which he says were paid him on the 14th November; and there is a memorandum across the face of the bill in Captain Jervis's hand, stating that 1,692 rupees were paid on that day. But this is not all. As if to vouch in the most complete way for the manner in which he states he received the payment, viz., in two cheques of 1,292 and 400 rupees respectively, there is the prisoner's rough calculation of the amount he would require to pay after giving the cheque for 400 rupees. I think it will be acknowledged by the Court that the man's veracity has been clearly established. Now, he states that the amount he received on the 14th of November was 1,692 rupees, and no more. And he also states that the prisoner's bill for his Mahasoo expenses was not paid until the month of January. If the Khansamah is to be believed, then—and I submit that there is not a particle of reason to discredit him—this bill of the prisoner's expenses at Mahasoo was not paid at the same time as the Commander in Chief's, and therefore the prisoner's statement in his defence, that the memorandum was written at the time they, *i.e.* the two bills, were presented and paid, is incorrect. For it is clear, if there is any particle of truth in the statement, it could at least have been written only when one or the other bill was paid. But in reality the memorandum is equally without meaning at whatever time it was written; and it is, I submit, impossible to suppose that any man of common sense could, at the time of paying a bill in full on account of another, make a memorandum at the foot of it to the effect that the amount of a bill of his own, which was not included in that bill, was to be deducted from it.

Gentlemen, the only conclusion I can arrive at, and I say it with regret, is, that that memorandum was written by the prisoner at a date subsequent to the payment, not only without a due consideration or appreciation of the facts, but with a view to mislead, and, as he supposed, to prove an honest intention.

As to the Commander in Chief being in the prisoner's debt at this particular time, I think I have shown that such was not the case; but there is no ground for supposing that he did not tell the Khansamah that his Excellency's account was overdrawn, and the prisoner does not deny that he did so.

It only remains for me, before closing the discussion of the first charge, to draw the attention of the Court to that portion of the Khansamah's evidence which I have read, where it is plainly stated that several books and bills of the Commander in Chief's, in which the prisoner's private accounts have been entered, were taken away from him by the prisoner, and never restored to him. This is in harmony with a long series of acts brought home to the prisoner by the evidence. It cannot fail to envelop this, as it envelops every other part of the case, in the deepest suspicion. The strongest fact against the prisoner is his possession of evidence which would throw light on every corner of the question, but which he resolutely declines to produce for the assistance of the Court.

The Court will doubtless have observed the stress which I have several times laid upon the prisoner's refusal to produce the books and papers connected with his management of Sir William Mansfield's household. This circumstance, indeed, of the prisoner's subtraction of these documents, and omission to produce them, governs and overshadows the whole of the case. It has necessarily placed the prosecution under the greatest disadvantages; while it deepened to blackness the suspicion which the facts known to us had created. It of course immensely increased the difficulty of placing even the facts known to us in their proper light. Similarly, the Court itself, in deciding the questions before it, will have to struggle with obscurities which the briefest inspection of the papers would probably clear up; and will have to solve, by inferential and circumstantial arguments, points on which it is all but certain that direct evidence of the most satisfactory character exists. It is most important to consider in what position the prisoner has placed himself by keeping obstinately from the Court the materials for deciding his case with absolute satisfaction to itself. The prisoner, as appears from more than one observation made in the course of this trial, justifies his refusal on the ground that the papers, cheques, vouchers, and other documents relating to dealings with tradesmen, which he possesses, are his own property, and not Sir William Mansfield's; while on the books he claims a sort of lien. More monstrous propositions have rarely, I venture to say, been deliberately stated. The books in question are books kept by a person attached by the State to the Commander in Chief's household; they have been kept with the Commander in Chief's pens and Commander in Chief's ink, upon the Commander in Chief's paper, and have exclusive reference to the Commander in Chief's private affairs. The bills, vouchers, and so forth, are merely, so to speak, accidents of debt contracted on the Commander in Chief's sole credit. It is really quite startling to have it seriously maintained that papers of this class are the property of the book-keeper, or that he is entitled to retain the books on account of some supposed lien upon them for alleged payments which he himself admits that he made, if he did make them, voluntarily, and without necessity; and payments, moreover, which can only be proved out of the books themselves. But what I am most anxious to impress upon the Court is, that even if this extraordinary claim to the books were maintainable, it is nothing whatever to the purpose. The Court has not to decide a question of property.

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The question is one of evidence; and the Court has to consider what are the inferences which the law itself draws from the non-production of these papers. It must be obvious to you, gentlemen, that if a person in the prisoner's situation could really take the course which he has taken, without any injurious consequences to himself, the interests of truth and justice would be perpetually suffering. The prisoner no doubt enjoys a vast advantage from being able to produce just as much or as little as he pleases, of the papers in his possession; thus asking the Court to attach a meaning to that which has no meaning apart from the rest of the evidence to which he alone has access. But the law does not leave him, and persons who act as he does, quite undisturbed in the enjoyment of this advantage, It is not quite as powerless as he perhaps supposes; and it encounters him with a weapon of its own; that very legal maxim which I have several times quoted—"*contra spoliatorem omnia præsumuntur.*" It says to him, in effect, "Keep back the evidence, if you please; you are not absolutely compelled to produce it. But if you do not produce it, you must submit to the consequences implied in the legal rule. You must submit to have every point of evidence strained, and every presumption made adversely to yourself." And this, gentlemen, is the mode in which the prisoner would have exposed himself to being dealt with, even though he had done no more than keep back the evidence. But in point of fact he is in an even worse position than that. He is not only the "Spoliator" of the legal maxim, that is, the person who withholds or suppresses evidence, but he is also the person on whom rests the entire, undivided burden of establishing his own innocence. Hence I have not the smallest hesitation in soliciting the Court to bring to bear on him the full force of the legal rule. He alleges that the Commander in Chief is indebted to him, but he keeps back the evidence by which alone this indebtedness can be proved or disproved. I call therefore upon the Court to presume against him, that Sir William Mansfield is not in his debt. He alleges that he did not take the full quantity of 33 dozen of sorts of wine, &c., which are proved to have disappeared, but he refuses to produce the books which it was his duty to have kept or superintended, and which would have shown on whose account the wine was expended. I therefore call on the Court to presume against him, that he did take the 33 dozens. He alleges that, not having completed his accounts, his system of book keeping was such, that he could not have been expected to charge himself earlier with the stores which he appropriated. But he keeps back that mass of books and papers of various kinds, by which alone this allegation could be substantiated. I call therefore on the Court to presume against him, that he might have charged himself by a simultaneous or nearly simultaneous entry.

I have now come to the proper moment for entering on the discussion of a subject which has been treated by the defence at some length, the subject of the prisoner's conduct in relation to an appeal which had been made to him to produce his books. No question can be more important; for, if he really has equivocated or prevaricated on the subject, charity itself could hardly be persuaded of the innocence of his intentions.

And the most important point in this matter turns on an alleged discrepancy between two notes written by the prisoner, one on the 20th April to Sir Willian Mansfield, and the other on the 24th to Lady Mansfield. The prisoner has dwelt at great length on the evidence for the prosecution touching these notes, and the dates of arrival at Simla of the boxes containing the account books; but although he has endeavoured to explain the matter by drawing his own inferences from the evidence, helped out by a statement of facts now disclosed for the first time, I will show to the Court that he has in reality not only left the case no better or more favourable to himself than he found it, but has, by his explanation, given rise in the first note to suggestions of another element of falsehood, leading to conclusions from which it seems impossible to escape.

Gentlemen, before entering on a discussion of this point, I will premise that a general statement of accounts cannot be prepared unless the accounts themselves have been made out and closed, and that the existence of a statement of accounts is impossible, unless the accounts themselves have existed.

Now the system of accounts kept by the officer in charge of his Excellency's household since the year 1861 is clearly shown by the books in possession of the Court. Major Flood has also proved that the book known as the ledger, but which the prisoner calls a cash account—a difference of expression, but of expression only, to which I call the particular attention of the Court—was always considered as one of the house books, that it was always kept up to date, and was closed regularly a few days after the end of each month. His Excellency has also stated that it would in his opinion be absurd to suppose that there could be any distinction between house and household books, in fact all the books might be included under either term. What then must have been his Excellency's impression on receiving from the prisoner the following note?

"My dear Sir William.

"All the house books are complete to date; at any time that you wish to go over them I shall be happy to attend on you for the purpose. The general statement of accounts you have seen to a recent date. The other shall be completed and shown to you very shortly. There is full work for one clerk in the establishment; I would gladly learn from you that one had been told off for the duty. I could not hold out a hope that Abbey will be able to continue to act as clerk, as well as do his other work; attention to the one duty can only be given by neglecting the other. The books, which you can see at a moment's notice, will convince you that everything is right.

"Very truly yours,
(signed) "*Scott Jervis.*"

"20/4/66."

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His Excellency's impression must have been that all the books of his establishment, including the ledger or cash book, which would show how the monies the officer in charge had received had been disposed of, were complete to date.

And what other conclusion could be arrived at, when the last paragraph of the note is considered?

Supposing it had been necessary to convince his Excellency that everything was right, that his accounts were correct, that all receipts of money had been accounted for, how, I will ask, could he have satisfied himself on this point, if the principal house book, viz., that containing the record of expenditure, had never been made up?

Now I will read the note written to Lady Mansfield on the 24th.

"My dear Lady Mansfield,

"I will complete a statement, such as you would like to see, when the boxes, with the accounts, bills, &c., arrive, and let you see it. Sir William has not yet spoken to me about the guard-room site.

"Very truly yours,

"24/4." (signed) "*Scott Jervis.*"

It thus appeared that a statement could not be prepared because, as it was alleged, the necessary papers had not arrived. It was as much as to say, what in fact the prisoner now states, that the accounts were not made out; because had the accounts been completed, a statement could, as a matter of course, be prepared.

Now, what was it Lady Mansfield asked for?

It was the prisoner's book containing a summary of the total expenditure. What book could possibly have been meant but the cash book (or ledger, as it was called in the house)? And from what book, I will ask, could a summary of the expenditure be made excepting from the cash book? Here there clearly was an admission by the prisoner that one of the very books Sir William Mansfield had, four days before, been led to believe was up to date, could not be completed for want of accounts and bills.

Now, Gentlemen, I will ask you whether, when Sir William Mansfield found it necessary to contrast those two notes, bearing in mind the system of his Excellency's household, as it was known to him, I ask you if it could fail to present itself to his mind, when he came to compare those notes critically, that one or the other of them contained an untruth; and this point being established in his mind, would not the thought suggest itself that, for some reason, the prisoner was intentionally delaying the rendering of his accounts?

But the explanation of the matter given by the prisoner is this: the house books he considered to be the daily books; and when stating that the house books were up to date, he did not mean to include the cash book or ledger, for the obvious reason that they had never been made out. Both these books have been produced in Court, and they are practically blank.

We are then to believe that his Excellency was to look at the daily books, such as the bazaar book, the cellar book, and so forth, to see that his accounts were all right; the two principal books never having been made out at all.

But is this state of the books, of the accounts,—for the prisoner also asserts in the most positive manner that his accounts, from the date he took over charge from Captain Christie, had never been made out,—is this state of the accounts compatible with the first note, in which it is stated "The general statement of accounts you have seen to a recent date"? If the prisoner had never made out his accounts at all, how could His Excellency have seen a general statement of them to a recent date?

But is it the fact that His Excellency had seen the general statement to a recent date? Here is a question put in cross-examination to his Excellency, which may throw some light on the subject:

"*Q.* Does not your Excellency perceive that in my note to your Excellency I alluded to a statement, up to a recent date, which you had seen, in contradistinction to the house books which I offered to show you; are they not evidently different things?"—"*A.* I believe that I had seen no such statement, and this struck me at the time that I received that note. I cannot swear to this; but it is my conviction that I saw no statement of my accounts from the date of the prisoner's taking over charge, viz., about 1st September of last year."

The whole answer, of which this is a portion, is instructive on this point; but it is a long one, and I will not take up the time of the Court. There is sufficient to show that His Excellency's impression, that he had never seen a statement since the prisoner assumed charge, was quite correct; for if there had been no accounts, it is clear, as I have before shown, that there could have been no statement.

What conclusion must inevitably be drawn from all this? Nothing less than that, whether or not the two notes were discrepant between themselves, the first note contained a deliberate falsehood, viz., that His Excellency had seen a general statement to a late date, when the very existence of a statement at all was a sheer impossibility.

Whether the prisoner was, or was not, in possession, on the 24th April, of the papers necessary to make up his accounts, it is scarcely worth while staying to inquire; but, I submit, that, as it is shown that the carts containing baggage from Calcutta, including the box with the house books and the ledger, arrived on the 16th, and that the last boxes came on the 22nd, it is difficult to see how many of the papers could still be wanting on the 24th. Here again the *primâ facie* evidence is wholly on the side of the prosecution; and if the prisoner

prisoner wished to vindicate his character for veracity, he should have shown to the Court what papers or books had not arrived by the 24th, what they were, and what was the cause of delay. But observation on the merely suspicious circumstances of the case would be practically endless. 16 August 1866.

And now, gentlemen, before entering on the examination of the defence on the second and third charges, I must ask your indulgence in reverting briefly to the occurrences of the few weeks immediately preceding the court of inquiry, which have been dwelt upon at some length by the prisoner with a view of casting aspersions on the motives of the Commander in Chief, and of justifying, apparently, his own disobedience of orders, and neglect of every opportunity of removing from his acts that presumption of criminality which the Court has seen it was lawful, in the absence of explanation, to entertain with regard to them.

Captain Jervis was in the interior when it came to his Excellency's notice that his aide-de-camp had established a farm, without his knowledge, on a principle that could not for a moment be tolerated. How the matter first transpired is so clearly recorded in a memorandum written by the Commander in Chief himself at the time, that I will take the liberty of reading it to the Court. This memorandum is the more important to the true representation of the case, as it will be seen that, from the very first, the prisoner was invited, in the most direct terms, to explain his conduct in the matter.

MEMORANDUM by his Excellency the Commander in Chief.

"The Commander in Chief has, to his great regret, received information which places Captain Jervis's conduct in such a light that he cannot receive him again, unless the Commander in Chief's impressions, fatal to Captain Jervis's character, are entirely removed.

"It has transpired in the course of business that Captain Jervis was himself undertaking the supply of the Commander in Chief's table with meat, poultry, &c., as if he had been a khansamah.

"His Excellency was most unwilling to believe the possibility of such an impropriety; accordingly, he put three or four questions to the butler, Abbey, for the purpose of ascertaining if there was any truth in the matter.

"His Excellency was inexpressibly shocked at the discovery that there was foundation for the assertion.

"The matter is so exceedingly serious, that his Excellency warned the butler to be careful in what he said, and his Excellency further told him that he should hear no more, except in the presence of the Military Secretary, when Abbey's words would be taken down.

"Accordingly, Major Flood attended, as well as the butler, on the morning of the 30th April.

"The butler, Abbey, was then personally cross-examined by the Commander in Chief. His Excellency desires a copy of the report of the examination may be given to Captain Jervis. If Captain Jervis admits the truth of the butler's allegations, there is nothing more to be done. If on the other hand, he does not admit the truth, he will appear before a court of inquiry, consisting of Major Flood and Major Gordon, and shake the evidence against him as well as he can.

"The Court will exercise its discretion with regard to confronting Captain Jervis with Abbey; such cross-examination being permitted as is right to both parties.

"The assembly of the Court will be secret, and the proceedings absolutely confidential.

"The court of inquiry will sit as soon after Captain Jervis returns as possible, supposing that he wishes to appear before it.

"Captain Jervis will see the propriety of not entering the Commander in Chief's house until his character has been entirely cleared.

"The Commander in Chief has written a memorandum on the evidence given by Abbey, and certain other facts in his own recollection, by which the faults attributed by him to Captain Jervis seem to be established.

"His Excellency has no objection to a copy of that memorandum being afforded to Captain Jervis, who may, after its perusal, be led to believe that the best course for him to pursue, will be to ask permission to resign his place and rejoin his regiment."

"1st May 1866." (signed) "W. R. M."

A full opportunity of explaining the establishment of a farm on his own account was here offered. This memorandum, together with other papers, was communicated to Captain Jervis on the 3rd of May, on his return to Simla, and his reply of that afternoon I will also read.

"My dear Flood,

"It is needless for me to say how utterly confounded I am at the perusal of the papers forwarded with your note this afternoon. It now only remains for me to beg of you that you will implore his Excellency to defer carrying out his orders for a few days until I have had an opportunity of explaining matters, and of confuting the charges brought against me.

"I am really so confounded by what has occurred that I can hardly write coherently. I

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"Very truly yours,

"Woodville, Thursday, 3/5/66." (signed) "*Scott Jervis.*"

Here, then, Captain Jervis expressed his willingness to explain, and it was thought that he would have taken advantage of the private court of inquiry offered to him. But no step was taken by him in this direction. His reticence was unexplained at the time; but the reason soon became apparent. He had, on the very day of his return from the interior, viz., the 3rd May, placed himself in the hands of counsel. I will ask the Court to refer to the prisoner's note of the 14th May, written after hearing the statement made that morning at the Court of Inquiry by Major Gordon: (Extract.) "My counsel, in whose hands I placed the case the day I received the correspondence, under the impression his Excellency would not hear me, will arrive very shortly now, when every thing can be gone into." Thus fixing the date on the 3rd of May.

And this brings me to another point which has been put forward by the prisoner as a justification of his rejection of all opportunities of explanation, viz., that the Commander in Chief had declined to see him, until he had removed the stigma resting on his character.

I need scarcely say that his Excellency had good and substantial reasons for declining a personal interview. The Court will remember a correspondence relating to the transfer of the stable, which took place in the preceding month, a very few days before the business of the farm transpired, and which the Commander in Chief consented to produce during his cross-examination. The Court will also remember the great forbearance shown towards the prisoner on that occasion, and the extraordinary tone he adopted in his letters to his Excellency, displaying a peculiarity of temper rarely met with, and a misapprehension of his relation to the Commander in Chief as an aide-de-camp on his Excellency's staff, which is the more remarkable seeing that he had held that appointment for several years past.

A few days later on there is another correspondence, also recorded with the proceedings, which shows that Captain Jervis had still failed to recognise his position, and in which he was told, in a very kind manner, that the Commander in Chief was quite tired of these constantly recurring little disagreeables; and it was pointed out to Captain Jervis that, if he was not prepared in the fullest sense to accept his position as aide-de-camp, it would be better if he left his Excellency's staff on friendly terms. Now all this betrayed a very ungenial and impracticable temper, and an ignorance of his position and his duty towards the Commander in Chief; and his Excellency being well aware of these unfavourable traits in the character of his aide-de-camp, had grave doubts that if he consented to see Captain Jervis on the matter with which he was charged, Captain Jervis might be betrayed into an altercation which would have compelled his Excellency to place him in arrest for grave insubordination, if not for a more serious offence.

The correctness of his Excellency's appreciation of the prisoner's temper, and the wisdom of the course he determined to pursue in not seeing Captain Jervis, must be plain enough to the Court from instances of which it has had personal cognizance; but if further proof were required, perhaps a more complete and satisfactory one could not be found than is afforded by the prisoner himself, who, in his defence on the fourth charge, pleads his infirmity of temper, adding that his Excellency well knew, and had himself referred to its impetuous and hasty character. Independently, however, of this, Captain Jervis had, by his admission of the 2nd of May, of his having, unknown to the Commander in Chief, started a farm on his own account on his Excellency's premises, showing that he had practised a course of duplicity which placed him in such a position as to render a personal interview extremely disagreeable to Sir William Mansfield as a man, and indecorous, unprecedented, and improper, when his Excellency's very high position is considered.

The impossibility of seeing Captain Jervis personally being clear, he was invited to offer his explanations in the most private manner to his brother officers on the staff. It may be thought that this opportunity would have been gladly accepted by one who knew that his conduct had simply been misrepresented, and therefore admitted of a satisfactory explanation, and could be cleared in a few minutes. But counsel had been called in, and the request for the meeting was never made.

And this would seem the proper place to explain a matter introduced by the prisoner in his defence, and placed by him in a very false light. I will quote his own words:—

"I now arrive at a circumstance, of which no mention is made in the correspondence, but which will not, I imagine, be disputed.

"Some days after the minute recorded by his Excellency on 3rd of May, his Excellency sent for a friend of mine, Major Innes, and held with him a long and confidential interview, the result of which was a proffer on his Excellency's part of an amicable adjustment of the dispute, accompanied with an offer to me of leave to proceed on furlough to England, and an assurance of future assistance."

This statement is in all substantial particulars contrary to fact. The suggestion of the proffer of an amicable adjustment, which the prisoner subsequently terms an offer of compromise, which he would not have accepted unless accompanied by an ample apology, is simply absurd. His Excellency certainly sent for Major Innes about the 7th or 8th of May, because

because Captain Jervis being at that time a guest in that gentleman's house, he thought an effort might be made through the latter to induce Captain Jervis to act like a reasonable man; of the possibility of which he was beginning to doubt, owing to his correspondence with the Military Secretary about the rendering of his accounts. He gathered from Major Innes, not that Captain Jervis disputed the justice of his award in removing him from his staff, but that his motives in the matter of the farm were pure. 16 August 1866.

The result of this interview was, that his Excellency gave Major Innes to understand that, if he could get Captain Jervis to act like an officer and obey orders in a reasonable manner, he was the last person in the world to behave with hostility towards him; and that whenever everything was fairly explained and settled up, according to his Excellency's directions, he should not be indisposed to soften the removal from his staff by giving favour to an application for leave of absence to England, which the prisoner had submitted on the 4th of May. But with this was coupled most distinctly the provision that Captain Jervis must act like an officer, that is to say, by giving ready obedience to such orders as he might receive.

It was in the course of that very day that the Commander in Chief became certified of the fact that Captain Jervis had for some time been consulting counsel, with a view to disputing the orders given him by his Excellency and the communications made to him under his Excellency's instructions with respect to the matter of the farm. It thus would become obvious that Captain Jervis had not complied with the instruction to satisfy Major Flood and Major Gordon that the accusation against him was unjust with respect to the farm question, if he conscientiously believed it to be so, although by his previous application on the 4th of May for leave to England, he had, in fact, accepted his Excellency's decision without controversy.

The Commander in Chief thereupon ordered the Court of Inquiry, and the object of the court was conveyed to Captain Jervis in such a manner by a letter from the Adjutant General, as to furnish a complete answer to the prisoner's plea of ignorance of his Excellency's reasons for convening the Court of Inquiry, as set out in the following words:—

"Before, however, my answer could be conveyed to his Excellency, his Excellency had changed his purpose; for, on the same day, for reasons which I have not yet been able to fathom, he convened a Court of Inquiry before which I was summoned."

The Adjutant General's letter was at follows:—

"Sir, "8 May 1866.

"1. It has come to the Commander in Chief's notice that you consider yourself an aggrieved and injured person with regard to the course pursued towards you in consequence of certain alleged grave irregularities in the direction of his Excellency's private establishment.

"I am again to remind you that a special confidential Court of Inquiry was offered to you last week, that you might be enabled to meet the allegations in a formal and official manner

"2. You have not made any movement towards obtaining such an inquiry, although you said the Commander in Chief's opinion was a misconception which you would be able to remove in a few days, if permitted.

"3. Several days have now elapsed; no request for the inquiry has come; while his Excellency is given to understand that you consider yourself really innocent.

"4. His Excellency proposes now to order a special Court of Inquiry to assemble, at which you will have to attend, for the purpose of rebutting the following charges."

The rest of the letter relates to the charges which have already been set out in the several memoranda read by the prisoner in his defence. If the Court wishes it, I will read the whole letter, but what follows relates to the charges to be brought against Captain Jervis at the Court of Inquiry. Between this date and the 11th of May several letters passed between the Adjutant General and Captain Jervis, some of which have already been called for and obtained by the prisoner, in his cross-examination of the Commander in Chief. As on this partial correspondence the prisoner has founded a plea of harshness and consequent justification for subsequent acts of disobedience, I will read that correspondence.

"Sir, "Head Quarters, Simla, 9 May 1866.

"I have the honour to acknowledge the receipt of your letter of yesterday's date.

"The matter therein referred to is in the hands of my counsel. I would much prefer not taking any step in it without a reference to my counsel.

"Under these circumstances, and others which I am not at liberty to mention here, I have to ask you to be so good as to take his Excellency the Commander in Chief's orders for the postponement of the Court of Inquiry.

"I have, &c.

"Colonel Longden, C.B., (signed) "*Scott Jervis*, Captain,

"Adjutant General of the Army in India." "106th Light Infantry.

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" Adjutant General's Office, Simla,
" Sir, " 9 May 1866.

" In answer to your letter of this day's date, I am desired to inform you that the question being simple matters of fact on which you are required to answer, you have already had many days without demanding the Court of Inquiry which was offered to you, there being no counsel employed against you, and, moreover, a great inconvenience being caused by a further delay of inquiry, the Commander in Chief cannot accede to a further postponement. It is to be recollected that the character of a very respectable man is involved in the matter concerned, besides what relates to you.

" 2. If the Court of Inquiry, in consequence of your representations should, when all the evidence has been taken, consider an adjournment necessary for the purpose of further investigation, it will of course act upon its own discretion; it being beyond his Excellency's competency to interfere, and quite beside his wish, when the Court has commenced its sittings.

" I have, &c.
(signed) " *H. E. Longden*, Colonel,
" Captain Jervis." " Adjutant General.

" Sir, " Head Quarters, Simla, 9 May 1866.

" You will oblige me by conveying to the Commander in Chief the expression of my extreme regret at being unable fully to meet his Excellency's wishes by attending the Court of Inquiry.

" As I already informed you, I do not desire to take any step in the matter, except under the advice of my counsel, who has undertaken the conduct of the case from the first.

" I have, &c.
(signed) " *Scott Jervis*, Captain,
" Colonel Longden, C.B., " 106th Light Infantry.
" Adjutant General of the Army in India."

" Adjutant General's Office, Head Quarters,
" Sir, Simla, 10 May 1866.

" I have submitted your letter, dated 9th May 1866, to his Excellency the Commander in Chief, and I am directed, as Adjutant General of the Army, to inform you that you have received a positive military order to attend the Court of Inquiry, which will assemble at my office this day, at 11 o'clock a.m., which, as an officer on full pay in Her Majesty's service, you are bound to obey, under the Articles of War. You are aware that there is but one result of disobedience of those Articles. The Court will assemble as ordered.

" 2. I am to remind you that a week has elapsed since a Court of Inquiry was offered to you on a matter affecting your character as a gentleman. It was not until yesterday that you put forward the plea of consulting counsel. His Excellency having only accidentally learnt that you disputed the justice of the decision in removing you from his Excellency's staff, no reply having come from you to that award when the transaction with Colonel Middleton had been discovered.

" I have &c.
" Captain Jervis, (signed) " *H. E. Longden*, Colonel,
" Her Majesty's 106th Foot, " Adjutant General.
" Late Aide-de-camp to the Commander in Chief."

Then follows a letter dated 10th May, from the prisoner, already recorded in the proceedings, in which he justifies the non-attendance by quoting Pipon. This again is followed by an answer of the same date, also recorded in the proceedings, in which the prisoner is told he is pursuing a most dangerous course, and his error about Pipon explained and corrected.

This brings us to the matters which are recorded and explained at length in the proceedings; and now having shown you, gentlemen, the true condition of affairs at the period of the second charge, I am in a position to meet the question so often proposed to you by the prisoner. "Where was the unwillingness to produce my accounts"? He appeals to his various offers of explanation and demands for inquiry, which he affirms were treated with disdain.

I will not detain the Court in the discussion of this point; I will only refer to the repeated endeavours that were made to bring the prisoner to a sense of his duty, to the efforts that were not spared to induce him to remove from his conduct the fatal suspicions that rested upon it, to the renewal in various forms of the opportunities of explaining, all of which he rejected on the sole plea, apparently, that he was injured in not being permitted to choose his own way of setting about the clearance of his character.

With the light now thrown upon his previous course of conduct, I can leave this question with confidence to your determination.

With this light I shall also be enabled to meet, as they arise, the several arguments of the prisoner, founded upon his own version of the previous occurrences. But indeed the points

I shall

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I shall have to meet are few, although I am unwilling to pass them without notice. It is not my intention to go over the evidence in support of the charges, unless it is directly contested by the prisoner. This, I apprehend, is the duty of the Judge Advocate; and I should be taking up the time of the Court unnecessarily. Gentlemen, at this point it seems proper to advert briefly to the second of the propositions which the prisoner submitted to you at the opening of his address. He seemed to intimate to you a doubt, or question, whether those social and private duties which officers undertake on the personal staff of a Commander in Chief, or other high officer, are military duties, for neglect of which, or misconduct in which, he can be called to a military account. It is true that the prisoner has not, if he is to be judged by this passage, done more than rest on the plea already recorded at the commencement of this trial; but, nevertheless, the point may perhaps come under your consideration, not indeed in relation to the charge alleging scandalous conduct, but in connection with the purely military offences which are set out in the charges we have now come to consider.

I begin with an attempt to divest the matter of an irrelevant suggestion which in reality does not affect the case in the slightest particular. It is alleged that his Excellency Sir William Mansfield holds the peculiar position of public and private prosecutor, or, in other words, that he is the person directly aggrieved by the prisoner's misconduct, and at the same time that it is his public duty, by virtue of his office, to maintain the discipline of the army, and vindicate offences against the Mutiny Act and Articles of War.

The suggested difficulty is met by a precisely parallel case. I refer to the familiar instance of a regimental mess. You are aware, gentlemen, that there is no regulation or rule of the service which requires a captain of a regiment to undertake the management of such a mess in the character of president of committee. The commanding officer of a regiment is made solely responsible for this establishment, which is, in every essential, the private and joint property of the officers of the regiment. Yet, is it not the invariable custom that a captain of the regiment undertakes the responsibility of the management? How, gentlemen, I ask you as particularly fitted from your experience, would you consider yourselves bound to act, as commanding officers of regiments, if in your regiment it came to your notice that there had been an improper use made of your own and your officers' property by the officer who had been placed in charge? Would you not assemble a court of inquiry and require that officer to account for his stewardship by producing all his accounts, papers, and so forth? and this independently of any action that you would be bound to take if it appeared that his conduct had been scandalous? And supposing that this officer declined to obey your instructions and pleaded the absence of a law or regulation which required him to undertake the management of the property he was charged with putting to an improper use—supposing that he declined to produce his papers to the court of inquiry, and advanced as an excuse that your private interests and those of your brother officers alone were at issue, and that by virtue of your military command you had no authority to compel him to obey your order, I ask you, gentlemen, would you be at liberty, bearing in mind your military responsibility to maintain discipline, even to exercise the remarkable forbearance which the Commander in Chief of the army in India has felt himself justified in displaying? Would it not be your plain duty to check the spirit of insubordination and indiscipline in the bud, and bring the full pressure of your authority to bear in enforcing the execution of your orders? You would compel the delivery of the books, or their seizure in default of surrender, and you would moreover, I venture to think, take such further notice of the contempt of authority as would bring the offender to a sense of his duty.

In this civil station of Simla the power you would have exercised to possess yourself of your property happens to be wanting; you would be driven to exercise powers, which elsewhere are military, through the agency of the civil tribunals; but the special and incidental supremacy of the civil over the military law in a station where an officer is in the performance of a military duty, cannot, I submit, for one moment be pleaded as an excuse for a subordinate to deny the authority of his commanding officer, whoever he may be, and for claiming a right to set discipline at defiance, discipline which, as the luminaries of the English law have over and over again declared, is as much the concern of civil as of military authority.

If there be any proof required that Captain Jervis accepted his position as aide-de-camp and its consequent duties of whatever nature, as a military duty, it is contained in his letter of the 16th April, which has been filed in these proceedings. It is true that he has subsequently assumed the opposite position, and denied the acceptance of this duty; but his later denial cannot cancel the former acceptance; and even if there had been no written acknowledgment of acceptance at all, it must be held that the very act of accepting the appointment of aide-de-camp is sufficient, in itself, to render him liable for a breach of its duties. I will contrast the evidence on this point.

Letter of 16th April 1866 to Major Flood:

"Sir,

"I am in receipt of your letter of yesterday's date, as also of a memorandum you enclosed of his Excellency the Commander in Chief's, directing me to understand that I am to continue in charge of Sir William Mansfield's establishment as a military duty. You will oblige by conveying to the Commander in Chief an assurance on my part that I very much regret that I should have caused his Excellency any annoyance with reference to my holding this charge, which I now view in a different light from that in which I looked upon it till very recently."

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And again, in his note of 25th April, to Major Flood:

"My Dear Flood,

"I HAVE received your note of yesterday's date, with the memorandum therein referred to. Kindly express to his Excellency that I am anxious to use every endeavour to comply with his Excellency's wishes in every respect.

"I am sorry that his Excellency should consider that I have failed in the performance of my duty as an aide-de-camp on his Excellency's personal staff.

"Very truly yours,

"Woodville, 25-4-66. (signed) "*Scott Jervis.*"

But the prisoner's views of his position evidently underwent a change; for these are the sentiments he expresses in less than a month after this last note was penned:

Extract of Memorandum dated 23rd May to Major Flood, signed by Captain Jervis.

"He is now called upon to attend a military committee appointed by Sir William Mansfield to audit his Excellency's private accounts, and he is warned that anything he says during this operation will be used hereafter against him. These accounts are accounts of Sir William Mansfield's private expenditure. They have been kept by Captain Jervis at the cost of great labour and trouble, in the absence of a paid accountant. They exhibit a considerable balance due to Captain Jervis; and Captain Jervis is willing and anxious to close and present them, if the means are afforded him of so doing. But he respectfully protests against the indignity and cruelty of compelling him to perform this private duty in the presence and under the surveillance of a military committee, thereby admitting, which he cannot conscientiously do, that the duty is a military duty, or that there is the slightest occasion for such surveillance, or the insult which it conveys."

Gentlemen, I maintain that the Commander in Chief, in dealing with the prisoner, has exercised an amount of forbearance scarcely within the competency of an inferior commander. He has left untried no suggestion, plan, or scheme, that offered itself for bringing his late aide-de-camp to a sense of his duty as an officer. But there is obviously a limit to the powers of forbearance of even a Commander in Chief in this respect, and thus it is that the prisoner finds himself arraigned on the present charges.

The acts of the Commander in Chief have been distorted into a course of persecution, plain as is the history of these transactions. His endeavours to lead the prisoner into the course that would naturally present itself to a mind not corrupted by the most dangerous indiscipline, have been perverted into an attempt to crush by the weight of his military authority the very man whom he almost tenderly protected against his own indiscretion.

It has even been insinuated that the finding of the Court of Inquiry on the 10th and 11th May, which his Excellency affirmed, in the most positive manner, had ratified his decision in the fullest sense, was in reality adverse to himself. But to such unworthy and unwarranted suggestions, I feel confident your ear has been deaf. Between the history of the case, as represented by the prisoner, and the facts as I have laid them before you, I will leave you, gentlemen, to judge; and will now pass on briefly to a more prominent feature of the defence.

Most remarkable is the plea that no order had ever been given; that a request conveyed in an official manner by officers whose duty it was to convey the orders of the Commander in Chief, cannot be regarded as an order, but simply as a request, which the officer addressed is at liberty to entertain or reject at his pleasure; and this plea is urged at length in refutation of the 2nd and 3rd charges. I have but one reply to the suggestion. Conceive, gentlemen, such an excuse being offered for disobedience to an order conveyed in the form of a request, in the field, and in the face of an enemy! I pass, without further remark, to the allegation that in the letter requiring the prisoner's attendance at the Court of Inquiry on the 4th May, it was not set forth that the books, &c. he was required to bring with him were "essential to the clearance of his character as an officer and gentleman"; these words being nevertheless set out in the charge. The Court will remember the statement of Major Gordon read on that day to the Court of Inquiry, and which the prisoner heard. It is thus clearly established, not only that he was made aware at the time that the books, &c. he was required to bring, and which he did not bring, with one solitary exception, were necessary for the purpose alleged, but by being made acquainted with the particular nature of the charges, he was enabled to determine what particular books were the more needed by the Court of Inquiry for their purposes.

With regard to the committee of audit, the prisoner alleges that in the 3rd charge the neglect to obey an order was again repeated, and that the date of the offence was said to be the 22nd of May.

He goes on to remark that the only order received on that day was a request from Major Flood to have the goodness to attend. The prisoner passes over unnoticed the fact—if indeed the citation of any other order is for a moment required—that in the Commander in Chief's memorandum of the 14th of May, appointing the committee, were included the following paragraphs:—

"He being under arrest, will daily attend at the Military Secretary's office, for the purpose of

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of assisting the Military Secretary, Major Gordon, and an officer to be named by the Adjutant General from his department, in unravelling the accounts; and so make a real and honourable attempt to relieve himself, Captain Jervis, from the frightful imputations under which he now labours.

"Every opportunity will thus be afforded him of righting himself if possible.

"The three officers, as above alluded to, will thus act as a committee, and will report for the information of the Commander in Chief as soon as possible."

This standing order to attend daily was of course suspended when the committee dispensed with his presence, but it none the less remained in full force, and of this the prisoner was well aware.

And now to refer to the questions which the prisoner discusses apparently with a view to justify his disobedience. The prisoner has asked you in his defence as follows: "Gentlemen, I ask what contumacy I had been guilty of before the 14th of May?" and he goes on to cite the two last letters of the correspondence preceding the first sitting of the Court of Inquiry, which I have now read to you in its complete form. After reading these two letters, the first being that in which he declined attending on the authority of an incorrect and obsolete edition of Pipon; the second, the Adjutant General's reply correcting his quotation and informing him of his error, he goes on to state "that it was so interpreted by his Excellency Sir William Mansfield was too true, as his letter shows."

It is almost unnecessary for me to observe, gentlemen, that the dangerous course the prisoner was told he was pursuing did not refer solely to this misquotation of a law manual, but to his whole proceedings, as detailed in the correspondence of the previous days.

For the disobedience of orders contained in the 3rd charge, the prisoner urges an extraordinary plea of justification, contained in the following words:-

"Major Flood's letter made no allusion whatever to this letter of Mr. Tayler's, and I therefore concluded that he had either written without the knowledge of his Excellency, or, at all events, without ascertaining what the decision of his Excellency was on Mr. Tayler's remonstrance, and under this impression I consider that I was fully warranted in awaiting the decision." And this notwithstanding that Major Flood wrote to inform him that *the Commander in Chief would hear of no further delay.*

With regard to the 4th charge there is little required from me in reply. The position with which the prisoner confronts it is, I submit, not maintainable for a moment. An argument suggesting an inference that an officer is not bound to obey a command, because the person charged with the delivery of the order is unable to cite a law in its support, notwithstanding that such person is able to state, in positive terms, that he is armed with a direct authority from the Commander in Chief—an argument such as this is, I would beg of you, gentlemen, to consider, subversive of the simplest elements of discipline; and though there be no law requiring that an officer under arrest shall be deprived of his sword, is it not the invariable custom of the service; and are not you, gentlemen, required by the terms of your oath to try these charges by the custom of war in like cases?

The plea that the prisoner was taken "by surprise," that his sword was "suddenly demanded without notice given or time for reflection allowed," is not, I venture to think, of a nature to find favour with you for a moment, for, if not ridiculous in itself, it is totally opposed to the facts of the interview, as described by Major Innes, in whose house the prisoner was then staying as a guest; and if in sheer pity for one so misguided, and allowing his kindlier feelings to trench upon the sterner calls of duty, Colonel Stewart omitted to convey to Sir William Mansfield the insolent messages he was charged to deliver, if he permitted himself to overlook the scarcely slighter insult to himself, does this diminish ought from the prisoner's contumacious contempt for supreme military authority?

Gentlemen, on the 5th charge the prisoner has appealed to you to consider the whole circumstances of the case, and I would now do the same. I beg you to weigh the prisoner's expressions, to compare them with his entire course of conduct, and to ask yourselves what decision the simplest interests of discipline demand.

I have now only to observe that, in discussing these military charges, I have deliberately refrained from entering upon a complete review of the clear and conclusive evidence which has been placed at the Court's command; I have confined myself to meeting a very few of the excuses and grounds of vindication, of the suggestions of imperfection in the proofs, which the prisoner has submitted to the Court.

The proofs of insubordination and contumacy are for the most part so glaring that they are only weakened by argument. My only fear is, lest I should have strengthened the arguments against them by treating them as worthy the serious consideration of officers charged with the discipline of the Queen's army.

Gentlemen, I have now reached a point at which I should have been well satisfied to conclude my reply, if the circumstances of this case had been other than they are. There is however still a subject on which, in the discharge of my duty, though with much reluctance, I am compelled to touch; and that is the spirit and manner in which this case has been conducted on the part of the prisoner. I must request the Court to call to mind the nature of Captain Jervis's defence on the charge of scandalous conduct. He substantially admits the material portion of the charge, but he throws himself on the consideration of the Court, begs it to believe him *primâ facie* incapable of the acts imputed to him, and calls on the prosecution to show that his character is such as to render the charges against him credible. No doubt this appeal betrays the misapprehension which pervades the whole of the defence as to the person on whom lies the onus of proof. If the prisoner intended, under the circumstances of the present case, to rely on his general character, he

16 August 1866. ought to have established it by favourable testimony. This line of argument having however been adopted, I am obliged with some regret to ask you, gentlemen, to consider what evidence of character is furnished by the expedients resorted to by the prisoner in the course of this trial. Captain Jervis has apologised for his intemperate language and disrespectful bearing at his first appearance in Court; but I am sorry to say there have been other passages in the trial for which he has not thought fit to apologise. I will first ask the Court to reflect on the mere length of Sir William Mansfield's cross-examination. If there had been the slightest and smallest ground for believing that this cross-examination advanced in any conceivable way the efforts of the prisoner to vindicate his character, I feel sure that the last person to object to it, and the first to assist it, would have been Sir William Mansfield himself. But now let the cross-examination be compared with the defence which has actually been set up, and with the admissions which have been made. I challenge contradiction to the remark which I made at starting, that nine-tenths of the questions are now seen to have been entirely irrelevant to the merits of the case, as they are now disclosed, and wholly without aim or definite purpose. What object can the prisoner have had in keeping Sir William Mansfield six whole days before the Court? What use has he made of the great indulgence the Court accorded to him in the cross-examination of a witness, who must have been as much disgusted, intellectually, at what the Court will now see to have been the irrelevancy of the cross-examination, as he was inevitably worn out by its unprecedented duration. I must further ask you, gentlemen, to call to your recollection that most disgraceful question, which indeed recoiled on the prisoner's own head, in which he insinuated that he had been in partnership with Sir William Mansfield in disreputable share gambling. Then, again, I beg you to recall the questions addressed to Captain Harbord, questions which, even taken apart from the replies, placed the prisoner in the dilemma of either disbelieving his own insinuations, which would of course be shameful, or of having lived without repugnance on terms of the greatest intimacy with a man whom, to say the very least, he believed to have been guilty of perjury. Captain Harbord's answers to those questions were as thoroughly satisfactory as his determination to answer them was honourable to himself; nevertheless, although (as it now turns out) the prisoner had not the smallest reason or wish to deny anything that Captain Harbord proved, he has twice repeated his attacks on that gentleman. Once, rather than not do this, he exposed himself to the censure of the Court for falsifying its proceedings, and he has again repeated the injury in his preliminary defence. The vilification of Abbey, the butler, I have already commented upon. I venture to think it even more discreditable to the prisoner than the attacks on other witnesses, because the prisoner, finding himself wholly unable to cast a slur on the man's veracity and character, has endeavoured to eke out the charges by reflections on the man's social position. These are passages in the trial illustrative of character which I think fit to point out to the Court. One more remains which I leave without comment to your appreciation; those indirect insinuations against a lady worthy of all the prisoner's respect, which I at least cannot read with common patience. I further refrain from pressing on the Court the inferences as to character which may be drawn from certain assertions made, and lines of argument followed, in the defence, supposing that the Court ultimately adopts the view which I have taken. Until the Court has actually come to a decision on them, I am contented to treat these matters as disputable. If however the Court should, to take an instance, be of opinion that the assertion of his Excellency's indebtedness to the prisoner is wholly false, there is little question of the further conclusion at which it will arrive.

Mr. President and gentlemen, for the decision of the questions submitted to you there can be no better tribunal than this. As officers, knowing the conditions on which the discipline of Her Majesty's Army can be maintained, you are able to assign their proper value to the reasons which the prisoner has assigned in justification of the conduct attributed to him in the purely military charges. The charge of scandalous conduct under the 79th Article of War, which is necessarily involved in some vagueness, is left to your appreciation as gentlemen. The question which it raises, and which you have to try, is the same which pressed on Sir William Mansfield at the beginning of these proceedings, but which he felt himself unable to decide without your assistance. The materials for a decision on this question, though through the prisoner's act you are not in possession of all of them, are nevertheless before you in greater abundance than they were before the Commander in Chief. The question is whether the facts established against Captain Jervis admit of his being sent back to his regiment to consort with officers of his own or superior standing, on terms of equality, and to affect his juniors by the example of his conduct, and by the inculcation of his principles.

W. K. Elles, Captain, 38th Regiment,
Officiating Deputy Assistant Adjutant General,
16 August 1866. Prosecutor.

During the reading of the reply, the prisoner hands in the following objection to the prosecutor referring to the copy of the statement of building accounts alleged to have been delivered to the committee of audit.

By *Prisoner.*] I submit that the prosecutor is supposed to produce all evidence in the prosecution, and cannot bring in further evidence, unless entirely *new matter* be adduced and proved in the defence. This question of the accounts is no "new matter." The defence

defence introduced it to *rebut* matter brought forward by prosecution. It may be denied, but no evidence can be brought forward on the point. 16 August 1866.

By *Prosecutor.*] The prisoner has, in his defence, read several original documents, as also copies of letters, as part of his statement, without challenge or objection on the part of the Court. He has also adduced documentary evidence expressly admitted by me, and without which admission he would have had to *prove* it. I thus acquired the right of a *general reply*, and in exercise of that, I submit that I may read any documents or papers as part of my address, or even bring in documentary evidence. This latter right I do not wish to exercise, but I submit I have to *read* several papers, and desire to do so.

By *Prisoner.*] The prosecutor declared the book in question to be a complete and closed account. I merely pointed out that it was *not* a complete and closed account, and produced papers to show it. This is strictly old and not new matter, but if the Court wish to receive the papers or documents, I will waive the objection with pleasure, and rebut the statement in my rejoinder.

By *Prosecutor.*] The case in point is an important one in itself. It is a charge of perjury, or nearly amounts to this, against a witness, and that witness Sir W. Mansfield. I submit that, in rebutting this charge, I should be allowed the utmost latitude permitted by the law.

By *Prisoner.*] What the prosecutor refers to as a "charge of perjury against Sir W. Mansfield" is *not* connected with this question of the credit of 2,000 or 1,000 rupees to the building account, but to his Excellency's statement regarding a specific conversation which his Excellency repeated in detail, and which I have shown *could not* have taken place.

By *Judge Advocate.*] To state that the figures in a document produced to the Court, and which were in the prisoner's own handwriting, are erroneous, and to replace them by fresh figures must, I think, be admitted to be "new matter." If the prisoner had supported such new reading by evidence, it would have been open to the prosecutor to produce evidence in refutation. The prisoner read a document, on which he relied, in support of his statement, and, in my opinion, the prosecutor is entitled to read a document in support of his.

By *Prisoner.*] I am quite willing to waive the objection.

Reading of the reply was continued until the prisoner again objected to the reading of his note of 5th May, in connection with the same subject.

By *Prisoner.*] I object to the production of any letters that have not been produced before.

Such letters are evidence, which the prosecutor had ample time to produce before, and which, referring to one of the statements made in the prosecution, he was bound to have before produced.

It is unprecedented that a prosecutor should produce further evidence on such points in his reply.

By *Prosecutor.*] I submit to the Court that the principle here involved is the same as that on which we have just had the opinion of the Judge Advocate, whether one document or 20 are proposed to be read. I submit that the admission of one lets in the whole. The point has already been waived by the prisoner, and therefore decided already. The letter is proposed to be read in reply to a statement of the prisoner, supported by documentary evidence, that Sir W. Mansfield has told an untruth. It cannot be considered a letter which I should have brought up during the prosecution.

By *Prisoner.*] I object to that. I only waived the point mooted in regard to a sheet of accounts, not to a letter, which cannot be received without verification.

By *Judge Advocate.*] I have nothing to add to my former opinion, except to remark that the prisoner's waiver cannot be considered to refer to this document, the objection to which the Court should decide. In my opinion, there is no legal objection to the prosecutor continuing to read his address containing the above document.

The Court is closed.

The Court decide that the prosecutor shall continue to read the letter contained in his address.

The Court is opened and the above read out.

Where the prosecutor refers to part of the defence, speaking of "items" of sherry, the prisoner interposes as follows:—The word "items" in the plural refers not to *sherry* only, but to all the things; and the words "distributed to officers for payment," refers only to mutton, as will be apparent if it is properly read.

The reply is closed.

By *Prisoner.*] The reply having been much longer than I expected, I would respectfully ask for eight days to prepare my rejoinder. I would add, that I shall require eight days from the time I receive copy of the reply.

16 August 1866. By *Prosecutor.*] I would submit that the prisoner should be required to state the points of my reply to which he wishes to rejoin. As I have adduced no evidence, the rejoinder should be permitted to any new matter only.

By *Prisoner.*] I would wish to rejoin to the whole matter of the reply; and I submit that there is no rule to prevent this course, which, from the nature of the reply, is obviously necessary to my vindication.

By *Prosecutor.*] I will ask the Court to consider the law on this point. With regard to the time required I will offer no objection, only calling to the attention of the Court that, when I asked for five or six days for my reply, the prisoner reminded the Court that he was under close arrest.

The Court is closed.

The Court is opened; and the Prosecutor states that the reply shall be sent to the Prisoner to-morrow afternoon. The Court decide to adjourn until Monday, the 27th instant.

By *Prosecutor.*] Will the Court now decide as to the extent of the rejoinder?

By *Court.*] The Court have accepted the prisoner's request.

The Court rises at half-past three o'clock, in pursuance to the above decision.

Twenty-fifth Day.—Monday, 27th August, 1866.

27 August 1866. The Court assembles, at the same place, at Eleven o'clock in the forenoon.

President, Members, Judge Advocate, and Interpreter, are all present.

The Prisoner and Prosecutor appear in Court.

Rejoinder. The Prisoner's address is read by his friend, Mr. Tayler.

Introduction.

Legal Maxims.

Mr. President and Gentlemen,

The unexpected length of the address which has been read to you by the prosecutor, and the elaborate minuteness with which he has entered into the details of the case under trial before you, will render it necessary for me to solicit your indulgence while I endeavour to meet the arguments adduced, if not with equal minuteness, at least with sufficient care to enable you, with satisfaction to yourselves, to balance the entire reasoning, and compare the conflicting statements of both parties.

While, however, I study brevity as far as may be practicable, I shall hope to leave no single statement of fact or exposition of law unnoticed or unrefuted. I shall search out every statement, however unimportant, and expose every fallacy, however subtle; so that, at the close of this rejoinder, there may be no hole or corner of the entire case into which the light of argument has not penetrated, or the rays of criticism have not, in some measure, illumed.

The prosecutor, at the commencement of his reply, has paid me the compliment (for such, I confess, I consider it) of saying that not the least remarkable characteristic of my defence is its extreme simplicity, inasmuch as it consists of an admission of nearly the whole of the facts charged against me.

I am, gentlemen, gratified at the testimony thus borne to the entire success of my intentions, for in very truth, gentlemen, I, from the first, desired to admit everything that was worthy of admission, and lay before you a simple and unvarnished tale; and this I venture to say was the only way in which I could assist the Court to arrive at a satisfactory conclusion in a case which has this peculiarity; that, while the principal facts are, on both sides, admitted or are capable of proof, the *intention*, which is the real question at issue, rests solely on gratuitous and ill-founded suspicion.

It will be obvious to you, gentlemen, that the prosecutor's address, as far as the four instances of the first charge are concerned, contains two separate parts; one addressed to the law, the other to the facts of the case. In the first portion the prosecutor, not without some plausibility, endeavours to combat my argument in regard to the important question of legal presumption; in the second he strives, with more ingenuity than reason, to invalidate he facts which I have adduced.

To the great and yet simple question of *law* I propose first to address myself, first, however,

ever, reminding you of that well-known and piquant sentence of one of our great luminaries, viz., that— 27 August 1866.

"In dealing with judicial evidence of all kinds, ignorance dogmatises, science theorises, *sense* judges. The right application of presumptive, as of other species of evidence, depends on the intelligence, the honesty, and the firmness of tribunals."

In the early part of my defence, gentlemen, I ventured to remind you of that sacred maxim of law which declares that innocence is always to be presumed, and that the legal presumption of innocence is so strong, that it can only be rebutted by strong and positive evidence—and I claimed on my own behalf the benefit of this presumption at your hands—which, as I then pointed out, had been rebutted by no evidence at all.

The prosecutor, not denying the existence of this general principle of law, denies that it is applicable to the present matter, inasmuch as, according to *his* view, it is overruled by a *special principle* which he asserts rules this particular case.

This special principle, as quoted by the prosecutor from a decision of Lord Mansfield, is, that "where the act done is in itself unlawful, the proof of justification or excuse lies on the defendant; and in failure thereof, the law implies a criminal intent."

Gentlemen, I fully admit this special principle; and as the prosecutor on his part does not question the general principle quoted by me, it is obvious that the point for your consideration is narrowed to this, viz., what is the legal meaning of an act which is "in itself unlawful?" for on the accurate understanding and correct interpretation of that phrase the whole question hinges. While, however, the prosecutor and myself are in happy harmony in regard to the existence and force of the two principles, we are, I need hardly say, widely at variance in regard to the definition of "an act in itself unlawful."

The prosecutor, it is true, disposes of the question, as far as this case is concerned, with wonderful facility; but whether his exposition is sound, and will stand the test of scrutiny, remains to be seen.

Before, however, I quote or criticise the somewhat offhand definition which he has propounded, I will extract from sources which you, gentlemen, will probably consider more instructive and more reliable, what I doubt not you will easily perceive to be the real signification of this significant expression.

The question then is what, "in the eye of the law and for the purposes of this discussion, are "unlawful acts"; and I venture, before citing authority, at once to answer the question by saying that they are acts which are either in themselves criminal, or as the lawyers call them, *mala per se*—acts which the instinct or common sense of mankind pronounce to be evil. Or they are acts which, not being criminal or evil in themselves, have become *unlawful* by express prohibition of law, or as it is termed *mala prohibita*. That such are the "unlawful" acts referred to by Lord Mansfield in the case quoted by the prosecutor, and that such are the acts in which *guilt is presumed* is evident, not only because our common sense, our reason and natural justice, so present them to our understandings, but also because in *every* instance quoted by the standard authorities in illustration of the principle, *such acts*, and *such only*, are specified.

In "Taylor on Evidence," from which the dictum of Lord Mansfield has been taken, I read the following (page 120, paragraph 103):

"Though the general presumption of law is, as we have seen, in favour of innocence, yet as men seldom do unlawful acts with innocent intentions, the law presumes every act in itself unlawful, to have been wrongly intended, till the contrary appears. Thus, on a charge of murder, malice is presumed from the fact of killing, unaccompanied by circumstances of extenuation; and the burthen of disproving the malice is thrown upon the accused. So if an unauthorised party, with the view of raising money, puts the name of another person to a bill, a felonious intent will be presumed, unless the accused had reasonable grounds for believing that he was authorised to act as he had done, and in fact acted on that belief. The same presumption arises in civil actions, where the act complained of is unlawful. Thus, in actions of slander, though it should appear that the defendant was not actuated by illwill against the plaintiff, malice in law will be inferred from the fact of intentional publication."

Thus, whether in criminal or civil cases, the acts referred to as "unlawful," are acts which a child of 10 years would intuitively pronounce to be wicked, or "*mala in se*," and such as necessarily to excite in the minds of *everyone* a consciousness of wickedness, viz., 1st, murder, in which the acts of killing being established, malice is presumed. 2ndly, "an unauthorised party, with the view of raising money, putting another person's name to a bill." Do we not intuitively feel, does not our inner conscience conclusively bear witness to the fact, that such an act raises *primâ facie* the presumption of guilt, being simply theft of the most dangerous kind accompanied with forgery.

And so in civil actions, "slander," being in itself a bad or mischievous act, malice is presumed. Further, in the foot note of the page we read, as illustrations of this principle in a judgment of Justice Bayley, the following acts, viz., "giving a blow likely to cause death," "maiming cattle," "poisoning fisheries," "traducing;" all and each of them acts, which the common consent of all mankind pronounce to be, of themselves, and in themselves evil, or *mala in se*, and in respect to which the presumption of guilt unavoidably arises.

I turn again to another standard work on evidence, and I find precisely the same result, viz., "Phillipps on Evidence," page 463.

I find illustrations of the same principle, well worthy of attention, and all bearing out the remark which I have submitted to you.

The first is in the paragraph specially devoted to intention; the words are, "where a prosecutor, on an indictment for forging a receipt with intent to defraud him, swore that he believed

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believed the prisoner had no such intent, the judge directed the jury that the defrauding, being the necessary effect and consequence of the forgery, *was sufficient evidence* of the intent to warrant them in convicting."

And in the note another case is quoted, where *intention* to injure the owner of a mill set on fire was *presumed.*

In page 464 I read, " Sir M. Forster observes, that in every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity are to be satisfactorily established by the prisoner, *unless they arise out of the evidence produced against him,* for the law" (and this is the maxim to which the prosecutor refers) " presumes the fact to be founded in malice, unless the contrary appears."

Again, I turn to a third well-known author, viz., Best; and in the 531st page I read the following words:—

" A criminal intention is often presumed from acts which, morally speaking, are susceptible of" (I beg you, gentlemen, to mark the expression) " *but one interpretation.* When, for instance, a party is proved to have laid poison for another, or deliberately struck at him with a deadly weapon, or discharged loaded firearms at him, it would be absurd to require the prosecution to show that he *intended* death or bodily harm to that person. So, where a baker delivered adulterated bread for the use of a public asylum, it was held unnecessary to allege that he *intended* it to be eaten, as the law would imply that from the delivery. The setting fire to a building is evidence of an *intent* to injure the owner, although no motive for the act be shown; and the uttering a forged document is conclusive of an *intent* to defraud the person who would naturally be affected by it, which inference is not removed by that party swearing that he believes the accused had no such intention. And by 14 & 15 Vict. c. 100, s. 8, it is enacted," that " on the trial of any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain any property by false pretences, it shall not be necessary to *prove an intent* on the part of the defendant to defraud any particular person; but it shall be sufficient to prove that the defendant did the act charged with the intent to defraud." Where " a party deliberately publishes defamatory matter malice will be presumed. In such cases *resipsa in se dolum habet,* or the thing itself contains criminality in itself; " the facts speak for themselves. Presumptions of this kind are so conformable to *reason that moral conviction and legal intendment* are here in perfect harmony. But the safety of society, joined to the difficulty of proving psychological facts, renders imperatively necessary a presumption which *may seem severe,* viz., that which casts on the accused the onus of justifying or explaining *certain acts primâ facie illegal.* It is partly on this principle that sanity is presumed in preference to innocence. So, a party who is proved to have killed another is presumed in the first instance to have done it maliciously, or at least unjustifiably, and consequently, all circumstances of justification or extenuation are to be made out by the accused, unless they appear from the evidence adduced against him."

Thus then, gentlemen, putting together all the "unlawful acts" to which these distinguished authors refer, to illustrate this principle, and indicate the species and character of act to which the presumption of guilt applies, we find the following catalogue, viz.: killing, forging, assaulting, incendiarism, poisoning fisheries, burning mills, traducing; a goodly catalogue of unequivocal crimes—acts which are "unlawful," because they are in themselves *evil,* injurious to individuals, dangerous to society, evil alike in the eye of God and the conscience of man.

But, gentlemen, I will ask you to look a little further into the subject, and direct your attention to the rules and principles laid down in regard to a different class of *acts*—acts which, like those which have been assumed as the basis of my arraignment, are innocent or guilty solely in respect to the intention with which they are committed.

Turning once more to the author from whom I first quoted, viz., "Taylor on Evidence," I find in the paragraph succeeding that which I quoted in my defence, and which lays down the principle to which I then referred regarding the "presumption of innocence," the following passage, page 116, paragraph 99:

" Questions of nicety occasionally arise where the presumption of innocence is met by some counter-presumption. Thus, where a woman, twelve months after her husband (a soldier on foreign service) was last heard of, married a second husband by whom she had children, it was held that the Sessions, upon a question respecting the settlement of these children, were justified in presuming that the first husband was dead at the time of the second marriage, though had it not been for the presumption of innocence, that of the continuance of life would have prevailed."

Now here, gentlemen, I submit we have an instance precisely in point, where in respect to an act, unlawful or lawful, *simply according to the knowledge and intent of the actor,* the presumption of innocence was so strong as to override another legal presumption and secure her acquittal.

Having, as I trust, now placed beyond all reasonable doubt the true meaning of this expression, I will turn to the prosecutor's argument, with which he endeavours to fix this pregnant signification on my act, in borrowing or using Sir William Mansfield's provisions.

His words are these: "Now, there can be no simpler or plainer instance of an act in itself unlawful, than taking a man's property without his permission."

Gentlemen, there is a species of logic familiarly called begging the question; and if ever there were an unique specimen of that style of ratiocination, I submit we have it now before us, the prosecutor not having apparently taken the trouble to ascertain what the *real legal meaning* of the expression "in itself unlawful" is, in the accurate and careful phraseology

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of the law, has jumped to the conclusion that it signifies an act, not as I have shown, carrying in itself guilt or malice on the face of it, but every act for which there is not express sanction, authority, or permission.

Thus he attempts to show that "taking a man's property without his permission" is such an act! He makes no distinction; he does not say "secretly taking," which is theft, or "forcibly taking," which is robbery, but taking without his permission!

But, gentlemen, is this the case? Does it never happen that a gentleman takes another gentleman's property without his permission, and yet without guilty or criminal intent, believing himself authorised so to take it. Are no books taken from friends' libraries, no wine or beer appropriated by casual guests, when the master of a house is absent; does the mere absence of express permission render such appropriation criminal in such a case as that before you, when, as I have shown you, in a quotation just read, that even in the case of a man who puts the name of another to a bill, to raise money, if *he believes* that he has authority to do so, presumption of guilt does not arise! While, in a case of alleged *bigamy*, the presumption of innocence was held to over-ride a counter presumption of law, and secure the acquittal of the accused.

Had the prosecutor, with a little more logical accuracy, alleged that to take another man's property *secretly*, under circumstances which show a desire of concealment, is "an act in itself unlawful," and raises a presumption of guilt, his exposition might have been accepted; but then, gentlemen, he would have described *exactly what I did not do*, and undermined his entire case.

But though the prosecutor has taken upon himself to offer his definition of "taking," I trust, gentlemen, you will be more inclined to accept as a somewhat sounder doctrine on the subject, viz., the authorised definitions of the penal code, as specially laid down for the guidance of courts-martial, in Simmons. Looking at the crime of theft, or larceny, as there authoritatively defined, I fail altogether to recognise the prosecutor's definition, but find one altogether different, viz., this (page 433, paragraphs 1162–63)—

"The 'taking' must be *felonious*, that is, done *animo furandi*, or with 'an *intention* of stealing,' without any claim, or pretence of right, and with *intent* wholly to deprive the owner of his goods, and to appropriate or convert them to the taker's own use, *otherwise the taking of another's property is a trespass only, and not an indictable offence"!*

"In deciding as to the intent, no general rules can apply, as the evidence must always be circumstantial, and consequently peculiar; and it is an admitted principle, that in every case of alleged larceny, the questions, whether the defendant took the goods knowingly, or by mistake—whether he took them *bonâ fide*, under a claim of right, or otherwise—and whether he took them *with an intent to return them to the owner*, or fraudulently, with intent to deprive the owner of them altogether, and appropriate or to convert them to his own use, *are questions entirely for the consideration of the jury (or the members of a court martial), to be determined by them, upon a view of the particular facts of the case.*"

So that you now perceive, gentlemen, mere "taking" is not one of those acts in which the "presumption of guilt" arises, because, unless it be *animo furandi*, or with intent to steal, it is not theft, but simple trespass! And if all the books and all the precedents in the world were examined, I venture to say that the essence of *intent to steal* is invariably secrecy and concealment, but that where these are not present the *animus furandi* could never be established.

Leaving, then, this patent fallacy at present, I will ask you, gentlemen, to note carefully, in connection with this particular point, two very remarkable facts, one connected with the prosecutor's charge, and the *Commander in Chief's own evidence*, the other with a fact, to which I am justified in adverting, as it is, though not forming a part of the evidence, notorious.

In the prosecutor's opening address he stated, "had there even been found in the few books now in our possession the slightest sign that any recovery was to be made on account of the abstracted property, a prosecution for scandalous conduct might not have taken place."

Now, considering that his Excellency is the *de facto* prosecutor, that it was he who himself conducted the first private examination, directed the preparation of the charges, and, as we may reasonably conclude, inspired this address, it is, I submit, a most remarkable fact that his Excellency failed to perceive that, by this statement, he actually demolished and nullified the charge he had brought.

The charge, you will remember, gentlemen, as I pointed out in my defence, is "misappropriation, with *intent* to defraud," in other words, theft; and the *intent*, as I before observed, must have existed in my mind at the time. Now, if this had been the case, how could my subsequent restoration or recovery of these things purge my criminality? Does a thief escape from punishment, or make theft no theft, by restoring the property he has stolen? If my "intent" was to "defraud the Commander in Chief," when I spread my table with his stores at Mahasoo, then, if I had restored him tenfold into his bosom, that intent would remain unaltered, and it would have been, according to his Excellency's view, quite as much his legal duty to arraign me as if no restoration had taken place.

And this becomes more striking, when it is compared with several parts of his Excellency's own evidence.

On the sixth day of the proceedings, I put to his Excellency the following questions, which, with their answers, I will now read.

Q. "May I ask your Excellency to refresh your memory, and endeavour to state, as precisely as you can, who first informed you of the fact of misappropriation which led to

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the examination?—*A.* I really cannot say; the suspicion arose against the prisoner in my household; but by whom the charge was first fixed, it is not in my power to answer.

"*Q.* Your Excellency has stated that you asked for no explanation from me before you charged me with misappropriation. If your Excellency had asked me, and I had told you that I had taken these stores, intending to pay for them and recover their value when the accounts were closed, would your Excellency have then charged me with that crime?—*A.* I should have taxed him with a falsehood, which was elicited by his own cross-examination very clearly, with regard to his books being complete. Had they been complete, and he had shown a refund, either in kind or in money, he would of course have got the advantage of it."

I do not here comment on the extraordinary fact of his Excellency's being unable to state who first informed him of the misappropriation, or rather, I might say, who first poisoned his ears by perverting an open and undisguised act of appropriation into an act of theft; but I would solicit your special attention to the second answer, in which his Excellency says: "Had he shown a refund, either in money or kind, he would of course have got the advantage of it." By which, I conclude, his Excellency meant, what the prosecutor evidently meant in his charge, that "refund" or restoration would have prevented this trial; thus, as I have pointed out, undermining the charge itself; because, if the act had been committed, as it is laid by the prosecution, "with intent to defraud the Commander in Chief," no subsequent payment or recovery could have washed it out.

The second fact to which I allude is this: I have before observed that every one of those acts which all the standard authors whom I have quoted, specify in illustration of the principle adduced by the prosecutor, are acts which the common sentiment of society unhesitatingly pronounces to be guilty, till explained or justified. Had I committed any such acts as those, not only enemies, but friends, would have condemned me, until disproof or justification was established.

But what is the fact?

Gentlemen, I have the misfortune to be an unpopular man. Sir William Mansfield has told you that I am ill-tempered and impetuous; that I sinned in the etiquette of visiting; did not make myself agreeable in society; and occasionally, after the fatigues of the day, retired early to bed. The fruits of these defects, gentlemen, I had reaped; and when I first put my case into the hands of my counsel, I had scarcely a friend in Simla.

Why is it, gentlemen, that at this moment I am comforted by the friendship, the sympathy, the enthusiastic support of the most honourable and independent gentlemen in the place.

Why is my cause advocated by the almost unanimous voice of nearly the entire press?

Is this compatible with the idea that the act I have committed is such as the general voice of society condemns as guilty, or in respect of which the presumption of guilt arises? Surely *not*, gentlemen!

Thus then, gentlemen, I venture to dispute the dictum of the prosecutor, that the onus of proving innocent intention rests wholly and solely on me. I reiterate what I took the liberty of stating in my defence, that the act of taking and using these things was *not* an "unlawful act" in the meaning of the law—carrying in itself *primâ facie* evidence of criminality—but "an indifferent act," in regard to which the presumption of innocence is only to be rebutted by strong and positive evidence.

Had I been a notorious robber or well-known dacoit, and the prosecutor an enthusiastic detective, ambitious of obtaining a conviction at any price, this barefaced attempt to desecrate one of the noblest principles that adorn our system of jurisprudence might have been condoned.

In a case like the present, acting as the prosecutor is on behalf of the Commander in Chief of Her Majesty's Forces in India, and in a prosecution which professes to proceed from motives of public duty, unmixed with private animus or personal ill-will, the endeavour, I submit, is without excuse.

It will be sufficient for me, gentlemen, I doubt not, irrespective of all learned arguments of law, to ask you to say in your hearts, and on your consciences, whether such an act, viewed in the light of the surrounding circumstances, as established by the evidence, does impress your minds with that *primâ facie* certainty of guilt, as the acts of killing, forging, incendiarism and others, so as to enable you to say or feel that *no doubt whatever* exists on the subject. For this, gentlemen, is the true principle which you must regard; this consciousness, as I have before submitted, is the foundation of all legal presumption; and it is to this you must appeal when you form a decision on the character of the act.

Having disposed of this legal question, as far as the point of *primâ facie* "presumption" goes, I now proceed to consider the second maxim of law which the prosecutor has brought to bear upon my position, from the repertory of legal principles, viz., the maxim well known to the earliest students, "*omnia præsumuntur contra spoliatorem*," *i.e.*, all presumptions are unfavourable to the spoliator or wrong-doer.

Here again, in respect to the existence, force, and equity of the principle itself, I admit all the prosecutor has advanced.

If I have, *without good and sufficient cause*, withheld, removed, or suppressed evidence of any sort or description, let, as the law prescribes, every presumption be taken against me; but if, as I have shown in my defence, I had strong and unquestionable reasons—reasons recognised by the law itself—for so withholding what I did withhold, until I was satisfied that I could with safety produce it; then, gentlemen, I submit that I was more than justified, and that the prosecutor's principle and the prosecutor's arguments are reduced to the category of

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those vague and inapplicable utterances which would be exceedingly important if only they were true. 27 August 1866.

But first, gentlemen, let me show you from unquestionable authority, that it is only when the suppression or withholding of documents or evidence is altogether *without explanation or cause* that it is regarded with suspicion, or gives rise to adverse presumption against the party withholding it, even before tribunals whose proceedings are final, instead of initiative, as are the proceedings of a Court of Inquiry. I quote from Taylor on Evidence, page 120, paragraph 102: "It cannot, however, be denied but that such conduct, in the *absence of all excuse*, is calculated to produce in the minds of the jury a very prejudicial effect against any person having recourse to it; and if such person be charged with fraud, or other misconduct, and the production of his papers would establish his guilt or innocence, the jury will be amply justified in presuming him guilty from the *unexplained* fact of their non-production."

Now, in my defence, gentlemen, I narrated to you at length those strange proceedings taken against me from the first—the *ex parte* evidence of (I will not call him the "menial," but the "domestic") Abbey, behind my back; the so-called cross-examination of the same Abbey by Sir William Mansfield, consisting, *not* of cross, but of leading questions, all tending to the same foregone conclusion—the mysterious misinterpretation of my denial, and its perversion, by some inexplicable process, into a confession; my insulting dismissal; the refusal of all opportunity of explanation; the sudden assemblage of a Court of Inquiry, after the proffer of compromise; the final sessions in his Excellency's private chamber, when Captain Harbord and the khansaman were added to the conclave,—all these proceedings (not exactly such as gentlemen on the staff of a Commander in Chief have been hitherto accustomed to, or such as are compatible with gentlemanly feeling or military honour) I have before narrated, *and not one of them has the prosecutor dared to contradict, or ventured even to explain.*

What, then, gentlemen, you have to decide on this point is, whether this unprecedented, this unheard-of accumulation of insults, injury, and misrepresentation, was not *sufficient, nay, more than sufficient,* to make me reluctant to put myself, my proofs, or my papers, into the hands of those who had thus wronged me, and justify me in withholding every scrap of evidence which was important to my character. Should I not have been an idiot, or a madman, especially, too, when military law expressly gives me the privilege of declining to take part in the proceedings of a Court of Inquiry, and allows me to reserve my defence? Should I not have been deserving of transfer to a lunatic asylum, had I, after this treatment, consented, in the absence of my counsel, to speak or act unnecessarily, either before the Court of Inquiry or that amphibious assembly which, under the hollow guise of a "*friendly committee,*" was appointed by the Commander in Chief to watch my words and actions with their friendly eyes?

Gentlemen, I know I will not allow myself to doubt that you will sympathise with me in this matter, and I therefore leave the prosecutor, his maxim, and his arguments, feeling confident that no "presumption," save the presumption of unfair, ungenerous, and unworthy treatment, sufficiently unworthy to justify any expedient to which, in self-defence, I might resort, will ever find place in your minds.

And if these are the undoubted principles of the law, common sense, and equity, the rules regarding evidence to criminality are equally important, and equally conclusive against the prosecution.

I here quote an interesting passage from Best's celebrated work on Evidence, which will show you, gentlemen, what is the effect of evidence in criminal, as contra-distinguished from civil cases,—page 120, paragraph 95.

"But there is a strong and marked difference as to the *effect* of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is sufficient basis of decision; but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. The serious consequences of an erroneous condemnation, both to the accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal, have induced the laws of every wise and civilised nation to lay down the principle, though often lost sight of in practice, that the persuasion of guilt ought to amount to a moral certainty;" or, as an eminent judge, still living, expressed it, "such a moral certainty as convinces the minds of the tribunal, as reasonable men, *beyond all reasonable* doubt."

Again, in respect to those rules of evidence which are universally established, and never can be safely transgressed, the same author thus writes—page 539, paragraph 442:

"While all attempts to reduce the credibility of evidence to fixed degrees must ever be deprecated as absurd and mischievous, the experience of past ages would indeed be thrown away, if it did not point out the principal quicksands and dangers to be avoided when dealing with the serious question of the guilt or innocence of persons charged with crime. Numerous rules have from time to time been suggested for the guidance of tribunals in this respect, among which the following are the soundest in principle, and most generally recognised in practice:

"i. The onus of proving everything essential to the establishment of the charge against the accused lies on the prosecutor.

"ii. The evidence must be such as to exclude, to a moral certainty, every reasonable doubt of the guilt of the accused.

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"iii. In matters of doubt it is safer to acquit than to condemn; for it is better that several guilty persons should escape than one innocent person suffer. The above hold universally."

And again, when discussing the question of presumptive evidence, the following important rules are laid down:

Page 447, paragraph 348. "(Presumption against illegality). First, then, it is a *presumptio juris* running through the whole law of England, that no person shall, in the absence of criminative proof, be supposed to have committed any violation of the criminal law, whether *malum in se*, or *malum prohibitum*," or "done any act subjecting him to any species of punishment, such, for instance, as a contempt of court, or involving a penalty, such as loss of dower, &c. And this presumption is not confined to proceedings instituted for the purpose of punishing the supposed offence, or dealing with the supposed conduct; but holds in all proceedings for whatever purpose originated, and whether the guilt of the party comes in question directly or collaterally.

"It is therefore a settled rule in criminal cases that the accused must be presumed innocent until proved to be guilty, and consequently that the onus of proving everything essential to the establishment of the charge against him lies on the prosecutor; a maxim founded on the most obvious principles of justice and policy."

An interesting note is appended to this paragraph, which appears to me, gentlemen, so pertinent to the present case that I am tempted to read it.

If his Excellency the Commander in Chief had held the same noble sentiments as the Roman Emperor, therein referred to, I need scarcely say, gentlemen, that this trial would never have taken place, and the world would have been saved a great scandal.

"It is related that on one occasion, when the Emperor Julian was sitting to administer justice, a prosecutor seeing his cause about to fail for want of proofs, exclaimed, "Ecquis, florentissime Cæsar, nocens esse poterit usquam, si negare suffecerit?" That is, "Can any one, O most noble Cæsar! be ever proved guilty if mere denial is sufficient to secure acquittal?" To which the Emperor readily rejoined, "Ecquis innocens esse poterit, si accusasse sufficiet?" or, in other words, who can ever be considered innocent, if accusation is sufficient to condemn him?

Gentlemen, in this 19th century of our Lord, we pride ourselves in the advance of civilisation and the march of intellect; but, I thank Heaven, no one, save the prosecutor and Sir William Mansfield, has ever thought of improving on this noble principle!

Counterfoils.—Commander in Chief's Perjury.

The subject with which I am now about to deal is one of great importance, not so much to myself as to his Excellency Sir William Mansfield. It has been dwelt upon by the prosecutor at considerable length, and with no less considerable emphasis, but he has left it, I am bound to say, not in the *same* position, but in a position infinitely worse than that in which he found it.

I refer to the subject in connection with which I lodged my cheque book, containing the counterfoils of cheques drawn in favour of creditors of Sir William Mansfield.

As the prosecutor himself has prominently referred to this matter as involving a charge of perjury against the Commander in Chief of the Army, I deem it advisable to remind you, gentlemen, precisely how the question originated, and by what steps it has reached its present critical stage.

While I was cross-examining his Excellency in the matter of the fourth, or Abbey charge, I put the following question:

"*Q.* Is your Excellency aware that the money actually paid was all my own money, your Excellency's account having been overdrawn?—*A.* I am not aware of anything of the sort, and I cannot believe that my account was overdrawn, because, so far as I have ever seen my acccunts, there has been invariably a credit at the beginning of every month. Three or four days before the prisoner's journey began, he received from me the sum of 4,000 rupees, viz., 2,000 rupees for current expenditure, that is, for the current month of March, and 2,000 rupees for the purpose of discharging some eight or ten bills, of which he showed me a list. I was about to write out cheques for those bills, when he proposed to me to give him the whole sum, and that he would go round and pay them, and save me the trouble. I have gone into this detail to show that the prisoner received from me the money he asked for; and, as has been stated before in my evidence, I believe a credit and debit account has never been permitted between my staff officers and myself."

Now, gentlemen, it is hardly necessary for me to point out that this answer of his Excellency's was calculated to give direct contradiction to statements in other places made by me, in regard to his Excellency's account being frequently overdrawn. It, moreover, contained an apparent insinuation, that in preventing his Excellency from drawing cheques in payment of his bills, I was influenced by some sinister or illegitimate motive (possibly the desire of obtaining "dustooree," or commission, as appears to have been the practice of Abbey), and, at all events, raised a case against me which I was bound to rebut. It was, then, in refutation of these statements, which I well knew were incorrect, and which were intimately connected with some of the charges, that I produced the counterfoils of my cheque books, exhibiting payments made several months before on account of those identical bills to which his Excellency referred.

These counterfoils, which, as you are aware, gentlemen I was quite ready to substantiate by

by reference to the banks, were admitted by the prosecutor as evidence, and, consequently, as proofs of what they indicate, viz., payment of those bills specified in them. 27 August 1866.

Before I advert to the painful subject which arises collaterally from those documents, and which the prosecutor says has reference to the veracity of his Excellency, I will make a few remarks upon the prosecutor's mode of handling the subject.

The first argument he adduces is, that I did not cross-examine his Excellency on the subject. These are his words:

"It will be seen, and I beg, gentlemen, your careful attention to the fact, that the prisoner altogether omitted to cross-examine his Excellency as to this pretended admission, and as to the pretended inaccuracy of his Excellency's recollection of what passed on the occasion. Why was this? Taking the text of the defence now actually advanced, it is not too much to say that nine-tenths of the questions asked in cross-examination were wholly irrelevant, and without purpose. Why did not the prisoner for once pursue a relevant course of examination, and cross-examine his Excellency, as to the details of the conversation? I submit that the true reason for the departure from the prisoner's unexampled license of cross-examination *can only be* that he feared the answer, and knew that his Excellency would flatly deny that he ever admitted that the prisoner had been paying debts for him out of his own money. Instead of adopting the simple and natural expedient of relevant cross-examination, the prisoner has taken a course which I am compelled to characterise as mere mockery of the Court. He has produced and tendered as evidence a bundle of counterfoils of cheques."

Gentlemen, I submit that this is probably the first time that a prisoner or defendant has ever been taken to task by a prosecutor for exercising his own discretion in the matter of cross-examination.

If there is one thing in which discretion is legitimate, and in the exercise of which the cross-examiner may fairly disclaim all accountability to others, and especially to his adversaries, it is this very matter of cross-examination, the delicate nature of which the prosecutor evidently fails to appreciate. I do not doubt that the prosecutor would have wished me to submit to his guidance in the matter; but I preferred my own mode. I held proofs in my hands that his Excellency's statement was incorrect, and I saw no reason for involving his Excellency in *further inaccuracy before the Court.*

If, as the prosecutor asserts, nine-tenths of the cross-examination of his Excellency was irrelevant (which, however, it was not), it is not for the prosecutor at this stage of the case to offer a covert rebuke to the Court which admitted it, and which is alone responsible in the matter. But the real fact, as must be patent to every one who reads the proceedings, is, that the plainest and most simple question which was put to his Excellency was met by a dissertation or a treatise; irrelevant matter of every kind was introduced, general questions were expatiated upon, moral and military duties were discussed, brief lectures upon law were recorded, and the only questions on which his Excellency spoke curtly, or withheld his answers, were those vital questions to which short and decisive answers were essential to the case; thus the length of the deposition in chief led to a corresponding length in the cross-examination. I can safely and conscientiously assert that I never put one single question which had not a legitimate object. I appeal to you, gentlemen, whether I did not invariably submit to your opinion whenever it was intimated to me that the Court considered a question superfluous.

But the prosecutor, after having taken me to task in this matter, next endeavours to invalidate the evidence adduced by me, and which he himself admitted by the following remark:

After saying I had mocked the Court by producing and tendering as evidence a bundle of counterfoils of cheques, he adds: I was not prepared "at first to admit the supposed evidence, but I have since consented to accept it for what it is worth. It merely proves this, that the prisoner, at whatever date, drew certain cheques on his own banker; whether the cheques were drawn in payment of any bills referred to in the conversation; whether they were drawn on account of the Commander in Chief; whether, if they were so drawn, the prisoner had funds of the Commander in Chief's to meet them? All these are points on which not one shred of evidence is offered."

Gentlemen, I ask you to regard carefully these sentences, and to say whether they are, as all statements laid before you should be, satisfactory. Passing over the inconsistency of admitting as evidence what the prosecutor afterwards declares is no evidence at all, would it not have been more to the point had he met the dilemma by some frank and straightforward denial, explanation, or retraction.

How does he alter the actual evidence which these counterfoils afford by calling them a "bundle," instead of a book? They have been admitted; they prove payments. I have distinctly asserted, and still positively assert, that the cheques they indicate were given by me out of my private funds. I declare that the bills paid by those cheques were the very bills, and no other, of which I presented a list to his Excellency on the day to which he refers! That is the question, gentlemen; and how has the prosecutor met it? He cannot deny the payments; he dares not assert that these were *not* the bills; but he says, "I did not cross-examine Sir William, and the counterfoils are in a 'bundle.'"

I have no fear, gentlemen, that you will be led aside by such transparent strategy as this from the real point at issue, viz., the fact of these payments having been made by me long before his Excellency gave me the money to meet them, a fact now proved beyond all possibility of doubt or question; and from this fact, with deference to the prosecutor, I submit, the unanswerable conclusions arise—

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First. That his Excellency's account was, as I have stated, overdrawn at that time to the extent of nearly 2,000 rupees; and,

Secondly. That the conversation which his Excellency has referred to in his evidence, *could not, by any possibility, have taken place.*

I submit these two conclusions for the grave consideration of the Court, and merely remind you, gentlemen, that it is the prosecutor, and not myself, who has publicly declared that my statements on this head amount to a *charge of perjury against the Commander in Chief of the Army.*

But the prosecutor, in referring to these payments, has made certain further remarks which, if only for their eccentricity, are well worthy of attention.

After first observing that the question whether I had or had not paid these bills "is a matter of no importance," and then, somewhat inconsistently, showing that it is a question which directly affects the veracity both of myself and his Excellency (a question which, I confess, I do regard as a matter of some importance), he adds, that "if it were really true that Captain Jervis had paid bills of the Commander in Chief's out of his own funds, without his knowledge or permission, all that can be said is, that he took a very great liberty with his Excellency, and, so far from justifying any other injury he has inflicted on him, has rather added to it."

I quote this remark, gentlemen, more for the purpose of exhibiting the "animus" which is actuating the prosecution, and the apparent shifts to which, in the hopelessness caused by the entire absence of reliable evidence, the prosecutor is driven. To represent the act of paying the bills of a friend as a "liberty" appears to me so extremely peculiar that I almost fail to comprehend the prosecutor's meaning; but when, in the next sentence, he represents it as an injury, I confess I am altogether at a loss; and, considering that I have been brought to trial on purely public grounds, and that his Excellency disclaims all private or personal ill-will, my bewilderment at such statements as these is not relieved.

But this is of importance only, as I before observed, as an exhibition of the *animus* which leads the prosecution to scrutinise all the hidden recesses of my character, and represent everything in the light of an offence, from my early retirement to bed to the sin of paying his Excellency's bills.

In another part of this discussion, the prosecutor observes that "the Court is expected to believe that his Excellency, after showing himself for years at Bombay a most punctual paymaster, suddenly, after assuming the command of the whole armies of India, and on charge being given to Captain Jervis, reversing his system of years, took the opportunity to run into debt deliberately to his own aide-de-camp."

Gentlemen, if such a wondrous change took place, it is not for me to penetrate too deeply into the mystery. With regard to the period of Major Flood's management, however, I can offer a cogent reason why his Excellency's account should *not* be overdrawn; a reason supplied by Major Flood himself, in the following question and answer:

"*Q.* If ever money was absolutely required, did you advance it yourself, or did you ask Sir William Mansfield for it?—*A.* I don't think I ever should have advanced money myself; I should have gone to the Commander in Chief for it."

Major Flood, therefore, it is clear, was not disposed to advance any money of his own, and he acted wisely. Had I conceived that such *accommodation* on my part would have been subsequently quoted as a liberty or a wrong, I should probably have followed Major Flood's example, who was wiser in his generation than myself. Thus, as far as my immediate predecessors, Major Flood and Captain Christie, are concerned, no system of debit or credit, for very obvious reasons, existed. Major Flood, as he tells you, would not, and Captain Christie could not, advance money; but whether such a system during my time was incredible or not, facts speak for themselves, and the logic of facts is irresistible. The system, in short, was a system of confidence on both sides, until confidence was destroyed, through the intrigues of others; and during its continuance, I did, as I have shown, take the liberty of advancing money when it was required.

This argument, therefore, on the part of the prosecution is not, I imagine, entitled to much weight; and I venture still to adhere to the statement which I made in my defence, viz., that his Excellency seldom gave his cheques with punctuality, that his account was constantly overdrawn, that I continually advanced money on his behalf, and that, on the occasion under discussion, I paid his Excellency's bills out of my own pocket.

But, gentlemen, only three days ago, I obtained, by examination of the books in the possession of the Court, unquestionable proof that, so far from his Excellency's account never being overdrawn in former days, as he so positively asserts, and no debit and credit account ever existing between himself and his staff, it was a common practice in Colonel Kirby's time, for larger sums, varying from 300 to 500 and 700 rupees, to be constantly advanced by that officer, and repaid by his Excellency by instalments, after several months, a fact which I will ask you, gentlemen, to verify, by examining the following pages of the book in question: (*Book produced*), Cash Book, No. 1.

But I have further evidence to establish the fact of his Excellency's account having been overdrawn, beyond the mere sum of 2,000 rupees, on account of the bills paid in March 1866.

In the bazaar and sundries books now in the Court, you will see, gentlemen, that every day's bill was paid up to date.

But his Excellency has told you that he paid me the 2,000 rupees, for the current expenses

penses for March, on the 24th of that month, and how then can his Excellency say that his account was never overdrawn, and express such horror at the idea of being in debt to his own aide-de-camp?

Whence came the money with which those bills were paid?

There remains one minor point to be noted in connection with this subject. The prosecutor has animadverted on my not having lodged the "receipted bills" with the counterfoils, though I stated in my defence that I had done so. The remark ought to have been erased, for the fact is, I could not at the last moment find them; but I am content to rest upon the counterfoils.

Ledger.—Cash Book.

And this brings me, gentlemen, to another point, in which, in his endeavours to weaken my position, the prosecutor has dwelt, viz., the much-vexed question of the "ledger" and the "cash book." So much has been said about these books, and so hopelessly is his Excellency at variance with others, if not himself, as to their identity, that it will, I fear, be necessary, before I expose the new fallacies that have now been brought forward, to recapitulate the circumstances, and remind you of the object with which, in my defence, I referred to the subject.

His Excellency, in his evidence, had referred to the book which he erroneously called the "ledger," as being a complete account up to November, and raised from its contents two conclusions to my prejudice, viz., 1st, that there being no recoveries of the value of the stores which I had borrowed, afforded evidence that I had stolen them; and, 2nd, that there being a credit shown at the close of each month, it was proved by that credit that his Excellency's account *had never been overdrawn.*

In answer to these statements it was that in my defence I showed the Court what that so-called "ledger" really was. I showed that it was merely a rough cash account, with little or no pretensions to *strict accuracy*, and in which many of the entries had been made by anticipation of what was expected, more than as records of actual receipt or disbursement. It is, in fact, an account drawn up by me at Barrackpore, for the purpose of showing an approximate memorandum of the position of affairs at that time, as far as could be done, but which, when made out with accuracy, and entered in the large book which I have produced, and which is the "cash book" (of uniform size and binding with the other general books) would have been corrected by reference to cheques and vouchers, and then would have formed a complete account, from which safe conclusions could be drawn, whether as to "recoveries" or credit.

This book was, it is true, handed over by me to the Court of Inquiry, when called for, *not* because it professed to be a complete account, but because it was the only book then in my possession which contained *any account at all.* It did contain a general statement, though a preparatory and imperfect one, and it is to this that I referred in my note, when I said, "a general statement you have seen up to a recent date."

This, gentlemen, is the simple fact, and though the prosecutor has taken upon himself to record a very stinging diatribe against "fictitious entries and fictitious credit," though he has characterised this explanation as the most "audacious ever placed before a court martial," I do not apprehend that, when you remember how his Excellency has suddenly called me to answer charges while my accounts are unclosed and unadjusted (a procedure which I venture to say is, even in the case of a paid agent, unprecedented), you will be supposed to sanction these abusive epithets. The best way, perhaps, to judge of this point is to suppose for a moment that matters had remained as they were, that the domestic Abbey had not come forward with his accusations, or had not been listened to when he did, that a little time had been given, and a little patience shown when Lady Mansfield asked for a summary of expenditure for the whole six months from the 1st of September, and that I had, as I of course should have, prepared and presented them in the great cash book; and then a question having arisen about the book and its entries, suppose at such a time I had then explained that the account in the smaller book was, as I now show it was partially, but not completely accurate, would anything have been said or thought of the circumstance? Would charges of audacity, fictitious entry, and false representation ever have entered into the heads or imaginations of any one concerned?

That the account is what I have represented would be clear, even from the single inaccurate entry of 2,000 rupees on the 1st of September, instead of as it really was, and, as it has been proved to have been, drawn on the 3rd of October; for it is obvious that this was an entry of what would be, or ought to be, rather than what had been paid; and this, gentlemen, is all I wished or proposed to show you; whether the inaccuracies or imperfections are more or less is beside the question. The fact itself is a simple one, and like any other fact in the world, if subjected to the test of injurious suspicion, which thinketh all evil, it can be made to assume a questionable shape.

But, gentlemen, the prosecutor seeing how completely this explanation of the real character of this book overthrows the two conclusions which his Excellency has attempted to draw from it, has made a rather injurious attempt to prove that this book *is the* cash book, and that the lettered cash book which I have produced, and which, as far as the purposes of this case are concerned, is blank, is, in fact, a petty cash book, thus accusing me of falsely transforming both, and, by a sort of hocus-pocus, converting the one into the other.

Now, gentlemen, may I ask you carefully to examine the book, which I call the rough

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and imperfect cash book, but which the prosecutor maintains to be the permanent cash account.

Setting aside the fact of the cash book, which I have produced, being in binding, size, value and uniformity with the other books, a little more like a permanent cash book than the other, if you will examine the pages, you will see nothing but erasures, accounts without totals, accounts twice repeated, a bit of the building account introduced on two pages, horse accounts, private accounts of my own, Captain Christie's, and Captain Harbord's, all sufficient to show at once that the character of the book is precisely as I have described it, and render it absolutely absurd to designate it as a complete or fair cash account.

Again, if you look at the larger book I have handed to you, you will at once understand why the leaves were cut out; Captain Christie (who, as I fancy you will perceive, was not a very expert accountant) undoubtedly *had* commenced entering petty items in this book, though you will see, gentlemen, that it is ruled for lacs, and this is the reason why I had those leaves cut out when I assumed charge, intending to paste the following entire leaf to the first, and devote the book to its proper purpose, when the time came for preparing that "summary of expenditure" which Lady Mansfield asked for.

I submit, gentlemen, that this statement is so simple, and the whole facts so completely tally with it, that you can hardly withhold from it *your entire* credence.

And here it may be as well to point out a curious fact in this case, viz., that although his Excellency and Major Flood have persisted in calling this and the other book which forms a continuation of it, the "ledger," there is the first book, prepared by Colonel Kirby, with the words "cash book" in distinct letters on the cover, while the other book, which shows the account of each of his Excellency's tradesmen in England and India, is seen clearly to be the "ledger."

The prosecutor, however, labours under great disadvantage in this matter, viz., the disadvantage of ignorance, and though deserving credit for the idea, if it be his own, cannot liberate himself from the effects of knowing nothing of the matter. On one point only there appears an apparent, though not an essential error.

The prosecutor has produced a copy of the account, which I lodged in the civil court, containing a balance due to me on account of the house of which I superintended the construction, and argues from the items of receipt entered therein, that 1,000 rupees only was credited on that account, and thus that 2,000 *rupees was* really, as shown in the rough cash-book, credited to the general household account.

But the real state of the case is this:

A cheque was given me on the 13th of October for 3,000 rupees. Sir William Mansfield intended that 2,000 rupees of this cheque should go to the building account, and 1,000 rupees to the table account. But 1,000 rupees was insufficient for the table account. I credited, therefore, 2,000 rupees, knowing that his Excellency would in time pay the other 1,000 rupees. The next cheque Sir William Mansfield gave was for 3,365 rupees, which was thus expended: on account of a bill, 865 rupees; table account of current month, 1,500 rupees; balance of 1,000 rupees paid short as above; total, 3,365 rupees.

The credits in the building account were merely entered at random by the accountant who prepared the statement; no dates are affixed; the account was hurriedly prepared, the object being only to show the balance due by his Excellency to me on the day I handed it over, without reference to the exact dates on which the payments were received.

System.

I now come, gentlemen, to the question of the *system* of accounts, a question which has been discussed, and testified to, and argued upon, till it is almost threadbare, but on which a few words are still necessary.

In a discussion on details, when the minds of the listeners to an argument have been for some time fixed on isolated points, it is always desirable to revert at intervals to the salient and essential questions on which the controversy hinges.

Leaving, therefore, the particulars of mutton, horseshoes, and the particular "tin of bacon," to which the prosecutor has pointedly alluded, I ask you, gentlemen, for a few minutes to consider *why* this question of system was introduced, and what bearing it has upon the question of my guilt or innocence?

Sir William Mansfield, in his evidence, when asked—

"*Q.* Would your Excellency state the system, if you can, on which the officers in charge of your household managed your accounts, or has the memorandum embraced the whole of that system?" replied that—"*A.* So far as it can be called a system, it is one of *entire confidence* in the officer in charge; he engaged servants and contracted bills on my account, without further check than he might consider expedient, to free himself from too considerable a responsibility. A certain sum of money, as dictated by experience, was given by me monthly for the ordinary current household expenditure, including petty bills. On account of larger bills, the officer in charge used to come to me for cheques for the purpose of discharging them. To the best of my knowledge and belief there never has been a debtor and creditor account between the officer in charge and myself. The "*ledger*" accounts, as I have lately ascertained by reference to the books of the prisoner's predecessors in household charge, were kept in the following form, viz.: *Cr.* Of an account of advances made to the officer in charge, and any sums paid to him on my account; and *Dr.*, with regard to the expenditure. This very simple account, which it is impossible to misunderstand, was balanced

balanced every month, and until the proper custom fell through my own neglect, a monthly abstract was shown to me. 27 August 1866.

This is his Excellency's own description of the system of management, and, I need hardly point out to you, gentlemen, that as a system of *confidence and unlimited authority*, there was, and could be, *no definition* of duties, and no practical limit to the manager's powers so long as it was honestly exercised.

I pass over those portions of his Excellency's evidence in which he states that his aides-de-camp had no authority to take eatables out of the house, or eat at his Excellency's expense, unless in attendance upon him, *because this* is *not the question in any way at issue.* I do not claim the right of using the stores, which I took for the Mahasoo entertainments without paying for them. I claimed the right only of borrowing them, and if his Excellency had waited a little longer, recredit to the uttermost farthing would have been given.

Acting, then, as I had been, under a system of entire confidence, and having myself bargained for complete authority over the whole establishment and all its members, I have quoted the *system* as proving that whether I under-estimated or over-estimated the extent of my authority, still there being no defined limit or restriction, no code of laws or manual of instructions laid down for my guidance, there was in real truth no line drawn or possible to be drawn, up to which it could be authoritatively said, "So far shalt thou go, and no further."

I will take for example one instance; the prosecutor has referred to a certain "tin of bacon," which passed into the hands of a member of the staff, and of which the value was carefully recredited to his Excellency's account at the market rate; also a dozen of champagne, lent to his Excellency's brother, Mr. Samuel Mansfield, and returned in kind. The taking or using of this individual tin is quoted as an act of unsuspected innocence. But you have only to suppose, gentlemen, that this particular tin had been accompanied by other tins of the same description, say six, or twelve, or twenty, and you then touch the difficulty of what is the line between accommodation and felony; and there, I suspect, the wisest would be baffled, and, till suspicion was called in to solve the doubt, the case would be an enigma and a riddle. So, also, in regard to the champagne, the one dozen might have been six dozen; his Excellency's brother might have been a friend or a neighbour instead of a blood relation.

I only mention these cases to show the indefinite nature of the system, and the uncertain and unascertainable limits of the authority under which I acted, while mutual *confidence*, the confidence which is supposed to exist between gentlemen in such matters, was, as his Excellency has told you, without limit or restriction.

Again, I have referred to the system, as regarded the sale of mutton to several individuals for the last four years, and the charge for shoeing horses, to show that such expenditure or debits were allowed to stand over for months together before recoveries were effected, and, consequently, that the mere delay in recovering, of which so much has been made, has clearly nothing to do with the matter, and in no way supports the supposition of guilty purpose.

Such, then, gentlemen, was the object for which I have referred to the system, both in principle and practice; confidence in the one, undefined discretionary power in the other.

But the prosecutor, and his Excellency also, have laid great emphasis on the fact, that though mutton, gram, and horse-shoes were thus debited and recovered, *stores* were not.

Now, although the nature of the thing taken cannot affect the principle, because it is a mere accident of the case, still it is worth offering an explanation of this circumstance also.

Bombay was a capital, and the permanent residence of the Commander in Chief. The very book that I have put into the court, in which the distribution of mutton is entered, will show you, gentlemen, what was, in truth, the fact, viz., that stores were not then kept in large quantities as a rule, but constantly purchased as they were required. It would, at Bombay, have been as easy for anyone to send for a tin of bacon, or a dozen of champagne, to the shop as to ask for it from his Excellency's stores; and, there being no larger store in hand, there would be no excuse for requiring or granting the accommodation.

I have already shown you, gentlemen, that the stores which I and Captain Harbord took the liberty of borrowing, were old stores brought from Bombay, and that it was as much an accommodation to his Excellency as to ourselves that they should be used; and thus the circumstances of the case, the requirements and the relative position of the parties were altogether different, and the conclusion which the prosecutor wishes you to draw, viz., that because in Bombay members of the staff, or friends, only received accommodation in some things, and not in stores or wine, therefore, in Simla felony was committed, because wine and stores were taken, is a conclusion which he may perhaps consider just, but which will scarcely commend itself to your minds.

In real truth, the practice was resorted to when circumstances rendered it peculiarly convenient. It was adopted in the case of mutton and horse-shoes; it was adopted in the case of the Umballa hotel bill, to some extent in Monteith's, and had his Excellency produced Messrs. Lazarus's account, it would have been seen in that also.

If suspicion is to be the test of such acts as these, if gentlemanly confidence is to be ignored and honourable motives disbelieved, then every act which, in the execution of certain and undefined duties, is incautiously committed, in reliance upon the trust reposed, is at any moment liable to be misrepresented.

But I cannot pass over this portion of the case without soliciting your attention, gentle-

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men, to another very remarkable fact, only discovered on Friday last on a cursory examination of the oldest cash-book, produced by his Excellency himself during his examination in chief. His Excellency, referring to this book, read out a few items of recovery on account of horse-shoes and mutton, which he described to be of very rare and exceptional occurrence.

No mention, no hint, was made, of any other recoveries of any description. Indeed, it was denied that any entries or transactions appeared in the book to indicate any such practice.

Gentlemen, I will ask you now to look at that book, Cash-book No. 1.

In the month of August 1860, you will perceive an entry of recredit, from Captain Murray, of cash (100 rupees), and other recredits from Mr. Mansfield.

October 28.—Received from Colonel Kirby himself, 75 rupees. Again, on 9th November, the same entries. Once more, in January, on account of Mr. Mansfield, *Rs.* 2. 8., and Major Flood, *Rs.* 392. 13.

In March, 1861, on account of boots for Miss Frere and payment to Colonel on account of money he had apparently advanced.

April 1.—Boots for Mr. S. Mansfield, and on 8th April repayment to Colonel Kirby of 700 rupees.

These items I have quoted from rough memoranda hurriedly taken in the Deputy Judge Advocate General's office, and cannot, therefore, vouch for their literal accuracy, but pray the Court to verify them.

Gentlemen, if I had thus suppressed important facts, what would have been said?

And this brings me to another argument in the discussion, and one which has been much pressed by the prosecution. It has been said, and repeated confidently, that "there is not in any single paper or book belonging to the prisoner an entry of these appropriations. If such an entry had existed, there is no moral doubt that it would have been brought to the knowledge of the Court."

Now, I must ask the Court to remember the present position of the case, as far as concerns, not the *pro formâ*, but the *real prosecutor, Sir William Mansfield*, and myself. His Excellency has charged me with stealing a large quantity of wine and stores, as specified in a formidable catalogue. How this list was prepared did not appear in the prosecution; but, from the prosecutor's reply, it now appears that *the only foundation for this list was the fact that the things contained in it had disappeared;* a fact which, in a household like that of his Excellency's, where only last year extensive and systematic robberies were discovered, is about as loose a datum on which to base a formal charge of fraudulent misappropriation against a gentleman, and a friend of several years' standing, as can well be imagined.

In proof of the charge, his Excellency himself produced and verified the consumption books of the house, in which, on certain days when I had entertainments at Mahasoo, a larger number of stores than was likely to be consumed by his Excellency appears. *This is the only reliable evidence to a fact,* which, from the first and throughout the proceedings, I unreservedly admitted.

Now, these consumption books are the only records of consumption, except the bills of fare, which contain the details of the entries made in the consumption books, and were usually attested by the initials of the officer in charge. *All these are in the hands of the prosecution.* The two together, with the help of the Khansaman's and Abdar's memory and memoranda, described by the Abdar as "some here, some there," &c., would have been ample vouchers, and are, in fact, the *only* regular vouchers to enable me to adjust the accounts; they are precisely the vouchers by which the account against any individual member of a mess would, in case of death or departure, be adjusted.

What right has the prosecutor to assume or presume that there are any other vouchers or memoranda in existence?

What possible occasion was there, under the system as described by the Abdar, for me to keep any other memoranda, besides those which are in the office, for his Excellency's protection?—Where is the justice of suddenly taking out of my hands a complicated charge like that of a large household, while all accounts were unadjusted; and then making me responsible for the confusion and uncertainty which this violent and arbitrary act creates, (and which is perpetrated by the ignorance of my successor), and quietly charging me with theft of every tin or bottle which is missing? Producing books which prove only a very small portion of the articles charged; and then, in apparent irritation at the failure of the proof, *assuming* that I have other books, which I have not produced, which would prove that I had stolen other things, which none can say were stolen; thus erecting a complete fabric of accusation, of which conjecture forms the base, assumption the walls, and suspicion the superstructure.

And here I cannot but advert briefly to the way in which an argument adduced by me, in my defence, has been met by the prosecutor's reply.

I had pointed out the case with which, when I saw the storm against me brewing, I might by a few strokes of the pen, while accounts and papers were in my hands, have entered recoveries of all the stores I had taken; thereby, as I stated, "concealing my peculation for all future time, and preventing either accusation or scandal."

To this the prosecutor has replied thus:

"In answer to this argument, gentlemen, I have only to observe that it is no part of the case for the prosecution to charge Captain Jervis with forgery."

Gentlemen, I confess I cannot understand this sentence. In the first place, as the entry has

has *not* been made, there is no forgery to be charged; and, secondly, if it had been made, there could have been no forgery in making it, for the effect would only have been to debit myself with the value; the very process which his Excellency said would be a proof of innocence. The observation, however, unmeaning as it is, is another indication of the mind of the prosecution.

It is satisfactory, gentlemen, to observe that there is no attempt to contradict what I have stated in regard to the stores and wine; the fact, I mean, that the first were the remains of an old stock, brought from Bombay, and the last were wines purchased at Simla.

The prosecutor says that wines improve, and provisions in tins do not deteriorate by keeping; but that Simla wine would improve by keeping is at least open to question; and most people would, I fancy, prefer fresh English stores to Bombay provisions of two years' standing.

I am content to leave this delicate question for the Court's decision, and pass on to the remarks recorded by the prosecutor on this portion of the case.

These remarks I quote at length, as they form a noticeable instance of the peculiar style of logic which pervades the prosecutor's reply:

"We have, then, an example of the prisoner's method of business: first, to deliberately place the Commander in Chief in his debt, by paying bills for him out of his own pocket, without his Excellency's knowledge, and then to repay himself by ordering goods in the Commander in Chief's name.

"But one side of this extraordinary debtor and creditor account being demolished (for has it not been shown, gentlemen, that there are are no grounds even for presuming that the Commander in Chief ever has been in the prisoner's debt), one side of the account being shown not to exist, what form must the other side take?—in what light must the pretended repayment be regarded?—what but a fraud deliberately practised on the Commander in Chief, under the impression that it would never be discovered."

I will here, gentlemen, only ask you to consider and say whether this is a fair or honest representation of the facts, either as proved by evidence, or admitted by me? Where is it admitted, or proved, that I "*ordered* goods for myself, in the Commander in Chief's name?" Where, that I did so for the purpose of repaying myself for money advanced on his Excellency's account?

What I did in substance say (and it is positive distortion of my meaning to give any other signification to the assertion) is, that, conducting the entire management as I was, under a system of mutual confidence, as a friend in behalf of a friend, and never hesitating when it was required to advance money from my own pockets for his Excellency's purposes (which I submit is indisputably proved), I did believe myself morally justified in making temporary use of any articles in store under my keeping, whether eatables or horse gear; and if there was delay in reimbursing his Excellency for such things, "I did not think, even looking at it as a mere matter of business, that I was committing any very heinous offence in suffering his Excellency to give me credit for a few hundred rupees."

Gentlemen, a case cannot be a good one which requires such misrepresentations as these to support it; and though the points on which they have been made are collateral only, and not in direct or close connexion with the charges, the feeling they indicate in a prosecution like this, which ought, I submit, to be untainted by personal animus, is a feeling which might well have been avoided.

The issue of the whole argument resolves itself into this; under the authority vested in me, I took both stores and horses' clothes, believing myself at liberty so to do, and relying on the "entire confidence," which his Excellency describes as the corner stone of the system.

I took them openly and publicly, without concealment or disguise, and had I but been allowed to make up the accounts, I should have credited his Excellency with their value to the last rupee.

Sir William Mansfield suspects me of theft, *assumes* that I intended to defraud him; asks for no explanation; gives me no time to make up my accounts; takes stock; and charges me with abstracting everything that is deficient. The word "confidence" disappears; high and honourable character goes for nothing; gentlemanly feeling and Christian charity are whistled to the wind. His Excellency suspects; the prosecutor presumes, and asks you, gentlemen, to presume that his presumptions are correct; and his suspicions are sufficient for my destruction.

Abbey Charge.

I do not suppose, gentlemen, that I need say much more in regard to the charge, connected with the travelling expenses of myself and Mr. Edward Abbey, than I have already said in my defence.

I have told the tale precisely as it occurred, and I cannot believe that you will allow the dishonouring suspicion which his Excellency has permitted himself to entertain, to rest for a moment on your minds.

I simply, therefore, put it to you, whether it is not absolutely incredible that a gentleman in my position should deliberately practise a wicked fraud for the sake of some thirty rupees; and deliberately admit even so respectable and worthy man, as Mr. Abbey is said to be, as a partner in my crime; especially when, as I have shown by the Umballa bill, that his Excellency's purse was under my predecessor's management, drawn upon for the private expenses of others, on precisely the same principle; and it has now been just discovered that Colonel Kirby's travelling expenses were paid in like manner.

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But the prosecutor has said so much regarding Mr. Abbey himself; he has so completely identified the personal character of the man with the charge in which he is concerned, and so rests the truth of the charge on the credibility of his evidence, on his respectability, character, and veracity, that I must not leave these arguments unnoticed; more especially as what is, at the close of the reply, termed my "vilification of Abbey," is brought up in emphatic terms, to the disparagement of my general character; and, first, in regard to the personal question. It is objected that I have called Abbey a "menial," and a "creature," that I have aspersed his character and assailed his "social position;" and though my attempts at cross-examination broke down almost ludicrously, I have accused him of contradictions and untruth. On the first point I will only say that if I have erred in calling Abbey a "menial," I have, I hope, already condoned for the incivility in this rejoinder by a more respectful style of designation; but whatever be his true "social position," whether he be a menial, or a domestic, a butler, or only an accuser, I cannot, I regret to say, agree with the prosecutor in regard to his evidence, or compliment him on his veracity.

I place before you, once again, Mr. Abbey's answer to my question in regard to his asking to have his own private bill receipted when he paid the bill of his Excellency, with his statement on the same point the next day, after he had had time for reflection, and had probably been informed that there were respectable parties in the Court prepared to convict him of falsehood.

Cross-examination of Witness Abbey, by Prisoner.

"*Q.* Did you ever, when presenting his Excellency's bills for payment in Simla, ask to have your own private bills receipted without payment?—*A.* Never."

Eighteenth Day's Proceedings.

Court re-assembled at 11 a.m. on Friday, 20 July 1866.

Edward Abbey re-appears before the Court, and standing up with a paper in his hand, thus addressed it:

"*Witness.*—Beg pardon, gentlemen, but would you allow me to read certain papers I have here?

"*Court.*—What are they?

"*Witness.*—It is about the first question put to me yesterday, and answered by me.

"*Court.*—Specify the question and answer, and you can add to it or alter it.

"*Witness.*—This is not exactly an address, gentlemen, but I have got such a bad memory I can't remember what I want to say. When the question was put to me yesterday, I understood that it was when paying the Commander-in-Chief's bills that I had asked for a receipt for my own, as a sort of discount allowed by tradesmen to the party who pays the bill, or the party who contracts it. If there is any other meaning, will Captain Jervis kindly explain it?" (*A pause.*) "Gentlemen, there is a meaning to it; I found it all out last night; would you allow me to explain it?

"*Court.*—Does it relate to the question before the Court?

"*Witness.*—Yes; it is on that question; I did not see the drift of the Captain's question until it was remarked last night that I had told an untruth.

"Court closed.

"Court order that the witness may be allowed simply to state what other interpretation can be put on the question, and then give his reply.

"*Witness.*—I might; yes! I might, when paying the Commander-in-Chief's bill, have asked for a receipt for my own; but have asked for it many times before, even before I knew Sir William Mansfield had a bill at that place.

"Here the Court interfered, and requested witness would fix any other interpretation that the question could bear, and then explain.

"*Witness.*—I might have done so; I am no scholar, never having been at college; if the Court would allow me to explain my own way, then I could explain.

"*Court.*—Think, and try to state, what other interpretation could be put on that question.

"*Witness.*—Yes; but I was so annoyed and upset on hearing that I told an untruth" (*a pause*). "No; it's very likely that I might have asked for a receipt, but I have done so before, when I have been going to the shop. During some time last year, the mess of the 101st contracted a bill with Messrs. Anderson & Co., at Simla. It is well known that these establishments allow a mess serjeant some small discount, and I have several times asked for my bill to be receipted on that account; and, believe me, this is the truth, and I would have answered the question yesterday in the same manner had I understood the question. Believe me, I wouldn't tell a lie, at any time, but particularly before this Court."

I also place before you his statement, made before Sir William Mansfield, with reference to the hotel bills, at the private inquiry conducted by his Excellency, contrasted with his deposition on the same subject before you.

He says, referring to the Kalka and Kukurhutee bills: "Mrs. Bain's bill, which includes Captain Jervis's refreshment, and perhaps wine, but *until I get the bill, which I have written for*, I cannot say. I have also written for the Kukurhutee bill."

It

It is clear that no allusion here is made to the destruction of any bills, or that duplicates had been written for.

In his examination before this Court he thus deposes:—

"*Q.* What was the contents of your letter to Mrs. Bain, and what answer did you get?—*A.* Well, I cannot say the contents of my letter to Mrs. Bain; perhaps you will like to see the answer. (Answer read out.)

"'Dated. Postmark Kalka, May.

"'To E. Abbey, Esq., Butler to his Excellency Sir William Mansfield.

"'Dear Sir,

"'I DON'T remember supplying coolies, &c., to you; if I did, you have my bill to show. By your sending me down your bill, which you received from me, I would supply you with a fresh one, as I gave the bill in full.

"'Yours faithfully,
(signed) "'*C. Bain.*'

"*Q.* Have you no recollection even of the substance of your letter to Mrs. Bain?—*A.* Substance was asking for a duplicate bill, as the other was destroyed. I have not the slightest doubt but Mrs. Bain has my letter, and would be happy to give it up.

"*Q.* I have shown the Court that you stated before his Excellency Sir William Mansfield that Mrs. Bain's bill 'was to come;' and again, 'when I get it,' without any mention or hint of your having *received one*; can you now explain why you withheld the fact of your having received and destroyed it?—*A.* I cannot say or give any reason for it; at the time I may not have thought it necessary.

"*Q.* If you had written, as you state, to Mrs. Bain for a duplicate bill, because you had destroyed the first, is it conceivable that Mrs. Bain should have written such an answer. Be so good as to read the note to the Court once more?—I'm sure I can't answer for Mrs. Bain's reasons for writing such an answer."

It is to the obvious inconsistency of these statements to which I venture to solicit the attention of the Court, and, finally, his statement regarding Mrs. Bain's bill, and the correspondence that passed between Mrs. Bain and himself on the subject.

I will ask you, gentlemen, after carefully considering these conflicting statements, to decide whether, connecting them with the whole conduct of the witness, the *rôle* that he has played throughout, as accuser, and the evident *animus* he displayed in his aggressive and unpleasant manner before this Court? I ask you whether you believe such portions of his evidence as are not supported by documents?

The prosecutor *tells* you he has examined his depositions carefully, and can discover no contradictions.

You, gentlemen, will consider them with more impartial eyes, and your judgment on the point will be unbiassed.

The only portions of these arguments which it now remains to notice, in connection with this charge, is the long and elaborate attempt which must have cost the prosecutor no little time or trouble, in which he strives to point out certain reasons why I should be held guilty of a deliberate scheme to steal these few rupees, because I authorised their temporary entry into the "Bazaar Expense Book," and because they then passed, *not separately*, but included in the undistributed total from the Bazaar book, to what he calls a general petty cash account! a transit which was simply necessary until the accounts were *finally adjusted*, which, as I have shown, they *never* were.

It will not, I imagine, be necessary to follow this ingenious reasoning through all its windings: when once suspicion is let loose upon a matter like this, viz., the unfinished and unadjusted "memoranda" of an agent's accounts, who is dragged before a Court on a charge of fraud, before these accounts are either adjusted or closed, there is no end to the petty suggestions and plausible conjectures which the demon may create.

To say that exceptional items which have no distinct place allotted to them, and are therefore temporarily entered in the most appropriate book, and pass, with the general total of that, into another (which, till adjusted, they must necessarily have done, or Abbey could not have accounted to me for the money he had received), the whole awaiting final and complete adjustment, to say that *this* is *proof* of fraud and theft against the agent, before his accounts are closed, and that, too, when the agent is a gentleman of honourable character and position in Her Majesty's army, is to establish a precedent which will, I truly believe, create consternation and alarm through every circle of society, and every regiment of the British army.

The only circumstance, in fact, which, even after suspicion was excited, and his Excellency's mind bent on establishing fraud, is the alleged destruction of the vouchers, which, though *not preventing*, certainly would increase the difficulty of an exact adjustment.

This act, as you have heard from the witness's own mouth, was the act of Abbey himself! and the only attempt which he *dared* make to implicate me in it, is by saying that he did it in my presence! a statement so indefinite as to be valueless, except so far as it tends to confirm the palpable desire of the witness to prejudice me.

Before passing on to the next charge, viz., that connected with the Khansaman's accounts, I pause for a few moments to notice some further remarks of the prosecutor, in respect to the cross-examination of the witness Abbey, in which he again adopts the unusual course of lecturing me on the mode of examination which I employed.

The remarks are so peculiar that I will here read them at length.

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"But I pray you to observe, gentlemen, that the prisoner did not even attempt to cross-examine the witness on these points; one would have expected that if he did ask Abbey for the papers he would have inevitably attempted to get the truth out of him."

This, gentlemen, is the second or third instance in which the prosecutor has taken upon himself to criticise and condemn my mode of cross-examination, and the expressions so frequently employed, of there being a "suggestion of untruth" in my questions, will recall to your minds, gentlemen, the same expression in its Latin form, "*suggestio falsi*," with which his Excellency himself more than once met questions put to him.

It would be sufficient, in reply to these unasked-for criticisms, to say that the position of the prosecutor does not exactly authorise him to volunteer his opinions on a procedure for which I alone am responsible, and which I have, by law and practice, unreserved discretion to conduct as may best suit my fancy; but as they appear to me to proceed from inexperience and a want of familiarity with the purport and privileges of cross-examination, I will take the liberty of referring him to the passage which I have already read upon the subject, which will, I fancy, show him that in his gratuitous lecture to me on the point, he has somewhat overstepped the limits of his vocation.

Khansamah's Charge.

In the remark which I submitted in regard to the second instance of the first charge in my defence, I ventured to point out that the charge altogether failed for want of evidence. I will take the liberty of reading the words once more:—

"With regard to the second instance of the first charge, it will only be necessary to point to the curious circumstance, that no evidence whatever has been produced, even to establish the *fact*; all that the Khansamah has been able to state on this subject being, that I paid the bills presented by him, whether on his Excellency's account or my own, by cheques, and that when I gave him the first cheque I told him that I paid it out of my own money, his Excellency's accounts being overdrawn; and though the charge specifies a particular entry, made in a particular book, neither the book is produced nor the entry shown!

"The charge, therefore, is utterly unsupported; and to show what little justification there was for making it, I am about to show this Court the Khansamah's bazaar account for his Excellency's expenses, as well as the Khansamah's bazaar account for my own expenses at Mahasoo, each drawn out separately, with a memorandum of mine, written at the time they were presented and paid.

"I submit, gentlemen, that this charge has not, and could not have had, at the time it was framed, even a shadow of justification, and leave you to say whether it was fair, or right, that it should ever have been brought forward at all."

Thus much I wrote in my defence, and after a most careful study of the prosecutor's reply on this charge, I confess I cannot see that he has strengthened his position in the *smallest* degree; indeed his arguments are all on the collateral points, and he concludes by calling on you, in this matter also, as in almost everything else in the case, to presume everything against me! because *I* have withheld the evidence which, if he had got, he might have proved what he has now utterly failed in proving.

It now appears that, holding no evidence whatever in support of the first instance of the first charge, not a scrap of paper to substantiate the accuracy of the large list of stores and wines which his Excellency has formally charged me with misappropriating, the prosecutor quietly states that this quantity has disappeared, and asks you, gentlemen, to *presume* that I have taken them all, and this, too, on the strength of my admission that I had taken what appears in the consumption book on particular dates, and on the prosecutor's confident but unsupported assertion that I have withheld the evidence which would establish the fact, if produced.

But how is the prosecutor justified in making this uncompromising assertion; what are the books and papers which he accuses me of withholding, what right has he to assume that I have got or that I withheld them?

If the Court will remember what the books are which have been specified in the proceedings, you will find, gentlemen, that, with one or two exceptions, they are all in the possession of his Excellency.

It has never been pretended that the *house* books were in my possession. The consumption books, both of wines and stores, have been produced by the prosecution! as well as the oldest cash-book.

Three others, viz., the old ledger and two cash-books, bringing the accounts down to the latest period, have been given in by me, that for last year having been previously laid by me before the court of inquiry.

The other books, viz., the real cash-book and ledger—both of them blank—have also been delivered to the Court.

There remain no other books that I have ever seen or heard of, except what the Khansaman *calls* books, and which, if a few sheets of paper folded together deserve the name, may by courtesy so be called.

These, containing merely the details of the total account, which I have *already handed to the Court*, are of no use to any one; but such as they are, I now hand them to the Court.

Not another book of any kind or description is in my possession, and those that I did detain until I could deliver them into your custody, or the civil court, were books which I had no desire of ultimately withholding, but which, containing matter important to my character

character and interests, I thought it commonly prudent to retain for the time, and on which, as I have been treated by his Excellency as an agent, I hold under the law, as agent, an indisputable lien.

And here I must omit to notice the prosecutor's complimentary remarks in regard to the two accounts which I delivered to the Court, on account of Mahasoo expenses.

Among the numerous instances of unwarrantable assertions put forth by him, without any real foundation of fact, none perhaps is more unwarrantable than what he has put on record on this particular point.

Struggling with the insuperable embarrassment of having brought forward a specific charge without, to use his own expression, one shred of evidence to support it, the prosecutor apparently hopes to supply the defect of proof by gratuitous insult to myself.

I will not follow him through the many pages which he has filled with his criticisms on a private memorandum of my own, for the long story he has in those pages served up, merely shows that he knows nothing about the matter, and cannot understand the meaning of my memorandum.

That meaning is intelligible to a child, if it would consent to be instructed, and it is simply this:

Two accounts—one as you will have seen, gentlemen, on separate pieces of paper—one for his Excellency, and one for myself, are contained in those papers, amounting to 1,692 rupees.

I paid 1,692 rupees, my two cheques, one of 1,292 rupees and the other 400 rupees, and the money being principally my own. I wrote this memorandum at the time, for my own information; and its purport simply is, that my own bill for *Rs.* 408. 7 should be considered to have been paid out of that gross disbursement. It is all very well for the Khansamah to say that my private bill was not paid till January, but that was a point for me to decide, and one on which he could know nothing; and, though the prosecutor holds up Hossein Khan as a mirror of truth, I need only remind you, gentlemen, that your president had to rebuke him for gross prevarication.

The prosecutor, after bewildering himself with his own embarrassing conjectures about a private memorandum which he vainly endeavours to understand, closes his remarks with the following sentence:

"Gentlemen, the only conclusion I can arrive at, and I say it with regret, is, that the memorandum was written by the prisoner at a date subsequent to the payment, not only without a due consideration or appreciation of the facts, but with a view to mislead, and, as he supposed, to prove an honest intention."

Gentlemen, the prosecutor has accused me of having introduced the style of the "minor melodrama" in my remarks upon the rather prosaic character, Mr. Abbey, the butler; but I doubt whether I have achieved so high a standard of melodramatic eloquence, as the prosecutor, in whose address "deliberate falsehood," "fraudulent intent," "audacious statements," "disgraceful questions," and other select expressions of high-flown abuse are profusely scattered.

Gentlemen, I will here only reiterate what I before stated, that this charge is totally unsupported by any evidence worthy of the name, unless, as I have elsewhere observed, suspicion under the plausible soubriquet of presumption is to do service for proof.

Notes to Lady Mansfield.

Unwillingness to produce Accounts.—Preliminary Proceedings reviewed.

I have now arrived, gentlemen, at that part of the reply, which treats, as the prosecutor describes it, of "the subject of the prisoner's conduct in relation to an appeal which had been made to him to produce his books."

In regard to this subject, the prosecutor then says, "No question can be more important, for if he (the prisoner) really has equivocated or prevaricated on the subject, charity itself could hardly be persuaded of the innocence of his intentions."

The prosecutor then proceeds to discuss the "*vexata questio*" of my two unhappy notes, and endeavours with much pains, still to maintain, what I certainly had hoped would have been abandoned as unmaintainable, viz., the *imaginary contradiction between them.*

But the arguments on this head appear to me so extremely weak, that I am content to refer you, gentlemen, to the exposition of the general subject which I submitted in my defence; and will only here touch upon the separate arguments which are adduced now for the first time with a view to invalidate my statements.

These arguments require notice, because they are *new*, not because they are either strong or logical, as I shall hope, gentlemen, to convince you.

The first is, that as, in my first note to Sir William Mansfield, I said, "The books which you can see at a moment's notice, will convince you that everything is right." Therefore, I must have meant that *all* the books, including the ledger and the cash book, were "up to date," because, if I understand his argument aright, his Excellency could not judge that "everything is right," unless "*everything*" was included.

I have already, gentlemen, pointed to an instance of that style of reasoning which I have ventured to call "begging the question."

I have now to direct your attention to an intellectual device of the same description which is equally fallacious, and equally unfair in honest argument.

I mean the device of interpreting a single sentence, without reference to the context. Now, when I wrote in a private note that by examining *certain specified books*, "His Excel-

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lency would be convinced that *every thing* was right," it is clear that this expression, when read *with* the context, referred to *everything* which was *contained* in, or would be shown by *those books*; not by any other books *not* specified.

When, therefore, I offered to show the "*house books*," and told his Excellency that they would convince his Excellency that "everything was right," I meant nothing more, than that he would see that "everything" connected with those books was right. What else could I have meant? And, however much the prosecutor may now try and make out that the ledger, or cash book account was a "house book," according to common parlance I must take the liberty of reminding him that I *wrote* the note, and I am therefore the best judge of what I meant.

And if, gentlemen, you will look for a moment at the internal evidence on this point, you cannot fail to perceive that my statement is the only one that *can* be correct, and that the attempt to pervert it, is entirely unjustifiable.

I would first ask you to say, whether, as it is now clear the cash account was *not* "kept up to date;" indeed that, with the exception of the rough account, closed up to November, *no* other account had been made up at all. Whether, under these circumstances, I could have been sufficiently irrational, or rather insane, to offer to show a non-existent thing to his Excellency at a moment's notice, and thus subject myself to the conviction of falsehood at any moment at which his Excellency might choose to take me at my word.

Again, in my note, I distinctly refer to a "general statement" which I remind his Excellency he had seen "up to a recent date." What was that, if it was not the cash account? Was this a thing to be seen or touched; or was it an imaginary essence and intangible myth? Was I sporting with his Excellency's senses when I reminded him that he had seen it; or was I myself under a delusion or glamour, when I made the statement? It is true that his Excellency has in his evidence made a dubious assertion that he believes he never did see such a statement; and in his reply, the prosecutor has clenched the assertion, by declaring in round terms, that his Excellency never did see such a statement, and charging me with "*deliberate falsehood*," for having reminded his Excellency that he had seen it.

I will here read this part of the reply, and leave it, gentlemen, for you to consider whether its tone and phraseology is quite justifiable, especially when, as I shall show, the prosecutor is totally wrong in his assumption.

"The whole answer, of which this is a portion, is instructive on this point, but it is a long one, and I will not take up the time of the Court. There is sufficient to show that his Excellency's impression, that he had never seen a statement since the prisoner's assumed charge, was quite correct, for, if there had been no accounts, it is clear, as I have before shown, that there could have been no statement

"What conclusion must inevitably be drawn from all this? Nothing less than that, whether or not the two notes were discrepant between themselves; the first note contained a *deliberate falsehood*, viz., that his Excellency had seen a general statement to a late date, when the very existence of a statement at all was a sheer impossibility."

I fear, gentlemen, the protracted discussion regarding cash books, ledgers, statements, and summaries of expenditure, and the conflicting statements that have been uttered in regard to each and all of them, his Excellency calling a cash-box what Abbey swears to as a ledger; a statement being *not* a statement, because it is contained in a book, and a summary of six months' expenditure being the same thing as a daily "house book." I fear that this discussion must almost have exhausted your patience, and it is with great reluctance that I venture to prolong it; but, gentlemen, I must add a few words, to show the little justification which exists for these hard and dishonouring words, which the prosecutor has held himself warranted in applying to me, by simply pointing out that it can only be by a sort of wilful blindness which appertains to those who do not wish to see, that the prosecutor can fail to perceive that if only that simple and reasonable privilege be conceded to me of interpreting my own meaning, and explaining my own words, every difficulty disappears, every apparent inconsistency is removed.

You have only, gentlemen, to perceive that there are three things referred to in my notes, viz.:

First. The "house books up to date."

Secondly. The "general statement up to recent date," which I reminded his Excellency he *had seen*.

Thirdly. The "general statement," or summary of the *whole six months'* expenditure, which Lady Mansfield asked for.

The first *were* exactly as stated, "the house books up to date," which I offered at any moment to show to his Excellency, and which Lady Mansfield, as she herself says, saw.

The second, is the three months general statement or cash account (called ledger by his Excellency), which his Excellency believes he never saw, but which I know he *did* see, for I showed it to him myself at Barrackpore.

Thirdly. The whole six months' expenditure which never has been completed, because his Excellency would never allow me to prepare it.

Let this simple explanation be considered, the expressions compared with the things, and the things with the expressions used; let the clearness and the consistency of the explanation be compared with the unintelligible and unsupported ramblings of the prosecutor's conjectures, and you cannot, gentlemen, fail to perceive how much difficulty has been created when none existed; how those little brief notes of mine, entirely consistent as they are, have been twisted into meanings which they never contained; and embraced by the arms of that unsparing suspicion which turns light into darkness, and defiles whatever it touches.

The

The last sentence on this head contains no argument worth refuting, but it is so characteristic of the bitter animus which pervades the whole of the prosecutor's address, that I am induced to quote the concluding words. 27 August 1866.

"Here again the prisoner's *primâ facie* evidence is wholly on the side of the prosecution, and if the prisoner wished to vindicate his character for veracity, he should have shown to the court what papers and books had not arrived by the 24th, what they were, and what was the cause of delay."

I leave this passage without further notice.

Several pages of the reply are occupied with a review of the circumstances which occurred prior to the assemblage of the court of inquiry on the 14th of May. Unwillingness. First occurrences.

I myself reviewed the same circumstances in my defence, and the facts must now, gentlemen, be imprinted on your memories.

I reviewed them for the purpose of showing, that although I doubtless did exhibit "unwillingness" to enter on my defence, or produce books or papers before the court of inquiry, I did not do so until I had been subjected to treatment far more than sufficient to account for and justify my reluctance.

It is a significant fact, gentlemen, to which I solicit your attention, that the prosecutor has not ventured to tread with me this dangerous ground. It is true he has reproduced the correspondence, and endeavoured to show that opportunities for explanation before committees and brother officers were offered; but what has he ventured to say regarding that first private and *ex parte* examination of the butler by Sir William Mansfield? How has he attempted to justify or excuse the fact of one gentleman examining his own servant to the prejudice of another gentleman behind his back? By what arguments has he palliated the perversion of a distinct denial into a confession? How has he defended the acting on that so-called denial to insult, dishonour, and, as far as he could, to ruin me?

These, gentlemen, are the wrongs, the insults, of which I have complained, and which, exhibited at the very outset, showed me the necessity of seeking advice, assistance, and support, without which I saw no hope, no prospect of escape. These were the acts which so clearly showed the "foregone conclusion" which beginning with *condemnation* foreshadowed an end which it was impossible not to predict.

And these, gentlemen, are the acts which, *unexplained and undefended*, now stand on record in the proceedings of this court, and which it will be your province and your sacred duty to deal with.

For myself, in remembrance of the respect which military duty demands towards the name of the Commander in Chief, I dare not trust myself to characterise or comment upon such acts; but I have greatly mistaken the feeling of officers and the minds of gentlemen, if they do not form a theme of wonder and consternation throughout Her Majesty's army for years to come, and serve alike as a beacon and a warning for future generations.

But, gentlemen, while I confidently leave this subject without further argument, I cannot refrain from noticing one curious and significant circumstance which first appears in this reply.

In my defence, when commenting on the mysterious and unintelligible change which passed over his Excellency's mind, when, a few hours after he had, through Major Innes, sent me a message of conciliation (I do not say compromise, as it has been objected to), he suddenly convened a court of inquiry, I said that I could not fathom the reason of this sudden resolve. The prosecutor has now, however, supplied the key to this hitherto unintelligible phenomenon, by explaining that his Excellency *that very day* discovered that I had consulted counsel!

Gentlemen, this explanation at once supplies the missing link in that chain of circumstances which I took the liberty of detailing to you in my defence, when I attempted to show you that the perilous position in which his Excellency stood after having publicly insulted and dishonoured me, on grounds which afterwards were shown to be frivolous and absurd, afforded strong motive to his Excellency to accept evidence which he would under other circumstances have *scorned to listen to*—evidence such as that afforded by Abbey, Captain Harbord, and the Khansamah, on that memorable morning in his Excellency's private room!

I leave it to you, gentlemen, to say whether the discovery of the link in this evidence does not strengthen the suggestion I ventured to offer in my defence.

While His Excellency thought I would submit to be dismissed, pocket my wrongs, and leave the country, his Excellency would pardon and pity me; but if I had the courage to resist, or the audacity to engage counsel, worse things should happen to me! These then are the "circumstances which produced the unwillingness" so constantly and so unjustly cast in my teeth, and led me, by the instinct of self-preservation, after I had fully gauged their character and purport, to hold fast the few papers and books yet remaining in my possession till I was sure of protection.

At the same time I wish to point out to you how unreasonably this charge of withholding evidence has been exaggerated; how maliciously it has been circulated by gossips; how incessantly it has been reiterated in these proceedings, and how *entirely* it is without foundation; *all* the books, save two old and two blank books, *having been throughout in his Excellency's possession!* and the few papers that were with me being of little or no importance, save to establish my claim to the balance; while the course I adopted in suing his Excellency in the civil court was the very course which should have rendered publicity, and the production of all documentary evidence, indispensable two months ago, had other proceedings been stayed, *first*, on his Excellency's own application, and in spite of my earnest

 remonstrance;

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remonstrance; and *secondly*, by the proceedings of this court which His Excellency contrived to convene during the interval of postponement which he had obtained.

These facts, gentlemen, will show you how thoroughly *unjust* are the imputations that *I* was reluctant either to produce accounts or clear my character by explanation.

That *I was* reluctant to put myself in the power of those who had already dealt with me in the manner described, is an undoubted fact, and I err greatly, gentlemen, if any one of yourselves would not have felt the same reluctance; *therefore* it was that I gladly availed myself of the law's permission to reserve my defence, and therefore it was that I so earnestly remonstrated against the humiliation, the indignity, the insult, of preparing accounts like a culprit, while my brother officers watched me.

But that I was unwilling to court inquiry, publicity, or explanation, when I could obtain it under the protection of a tribunal, is, I submit to you, gentlemen, *untrue*.

No man in the world, I venture to say, has ever taken such pains to bring all the matters which have been raked up to my prejudice, as I have done! to public inquiry.

Every subject, from the romance of the Mahasoo Farm to the practical question of debit and credit, has been for months past laid before the tribunals of the country, and my only desire, my only effort, has been *to have everything brought to light.*

And I would now, gentlemen, take the opportunity of stating that, should you think that the question of my guilt or innocence, my veracity or untruth; my integrity, or dishonour, depends *in any degree* on the question of accounts; I would earnestly pray you to allow all the books, papers, and vouchers in the court, or in the possession of either party, to be placed, by your orders, in the hands of a professional accountant for analysis and report.

I, gentlemen, as I mentioned in my defence, have never condescended to touch any of the papers, or hold any communication with anybody, during these dishonouring proceedings. When first called on by the committee, and before the true nature of that committee was revealed to me, I promised to prepare the accounts, and how did I attempt the fulfilment of that promise? I drew up at once the building account which you have seen, and laid it before the committee, and I placed the general accounts at once in the hands of Mr. Hardy, a professional accountant, and he commenced the preparation of the whole.

Then it was that the true character of the committee was intimated; the books necessary to complete these accounts were refused by Sir William Mansfield, and the sheet itself has remained unfinished to this day.

Thus it will be seen that, so far from having acted the part of the "spoliator" of the law, I have taken every conceivable step to bring all matters of dispute, and all papers connected with them, before the public and the courts, and subject them to public investigation; though under the privilege allowed me by law, I reserved my defence at the court of inquiry, and under the instincts of nature and the suggestions of prudence, I was reluctant to trust anything to private scrutiny.

Military Charges.—Military Duty.

I no not propose, gentlemen, to trouble you with many further observations on the second and third charges, which I treated at length in my defence, and to which I respectfully refer the Court. These charges accuse me of neglecting to obey his Excellency's "order," to bring all my accounts and papers before the Court of Inquiry and committee. Besides pointing out that it was not an order, but a request, and that therefore the charge, as worded, failed for want of correctness, I submitted for your consideration that, as military law expressly allows an officer, who is accused of an offence, to decline taking any part in such inquiry, and reserve his defence until arraigned before a court-martial (it would be little less than mockery of the law), to compel him to produce papers, accounts, or documents of any kind connected with that defence. I would again most respectfully reiterate that argument, and ask you to say, not only whether I was not justified under the law in withholding, in the absence of my counsel any papers that were essential, either to the vindication of my character or the proof of any claim against Sir William Mansfield; but whether it was fair, or honourable, or just, when I had expressed my desire to claim the privilege by law allowed, to endeavour to compel me to do what would have, *de facto*, nullified the privilege, I leave you, gentlemen, to say. At the same time I must not fail to remind you, gentlemen, that I did attend both court and committee, and showed the members such accounts as they considered necessary at the time; and that the offence laid under the third charge, was, as I have proved, and as the prosecutor has altogether failed to disprove, merely the offence of neglecting to attend the committee at the request of Major Flood, *on one particular day of the sitting*, at the very time that the whole question was before his Excellency himself for reconsideration.

And here, I think, gentlemen, I may fairly complain of some little want of candour in the prosecution in respect to this particular point.

I showed in my defence the difficulty I had in eliciting from Major Flood the important fact, as to whether his second note, informing me that his Excellency would not allow of any further delay, was written after ascertaining his Excellency's decision on Mr. Tayler's remonstrance of the 22nd May, or before any communication had passed between them.

This was in fact a *most important point* because, when a question has been laid, and is under consideration before a mutual superior, it is neither wrong nor unreasonable to ask a subordinate to hold that superior's orders in abeyance *until the result is known.* If you will

will carefully consider, both the evidence, the letters, and the prosecutor's present address, gentlemen, you will plainly see that this point *has to the last been evaded,* and that the charge has to the last been pressed against me, as if I had been told expressly that *notwithstanding* Mr. Tayler's letter, his Excellency, *after reading* it, still insisted on the sitting of that particular day, and my attendance before the Committee, whereas it was obviously *nothing of the sort.* 27 August 1866.

This, I submit, is a somewhat unfair and disingenuous suppression of the actual truth, maintained for the sole purpose of aggravating my supposed culpability.

But, gentlemen, whether my reluctance to place my papers, and the materials of my defence, before a committee which, notwithstanding its outward profession of friendlessness, it was impossible not to suspect of hostility, the more dangerous because disguised; you will not, I am sure, gentlemen, forget or overlook the position in which I had been placed by the previous proceedings; the alarm excited in my mind by the *ex-parte* examination of Abbey, and the apparent determination exhibited in every part of his Excellency's action, *to secure my condemnation, if not my ruin.*

When the real character of these whole proceedings are impartially considered, gentlemen, by you, and weighed in the balance of those principles of justice which are the pride of English gentlemen to uphold; when they are tested by that passionate love of fair play and open dealing, which moves the lowest citizen in the streets of London, and stirs the heart of the rudest rustic of the country village, then, gentlemen, you will be able to form some estimate of the indignant and agonising feelings which oppressed me from the day that Abbey's slander first shocked my senses, to that on which I was ignominiously expelled from Sir William Mansfield's roof.

Whatever errors, whatever impatience, whatever insubordination, so called, I have been driven to exhibit during this long series of harsh and vindictive insults, has been the result, gentlemen, as you must surely *feel,* of that honest indignation which injustice ever excites in an English heart, embittered by the ever present consciousness, that the man who was thus oppressing me was the friend to whom I had devoted, for years, the best energies of mind and body; and the irresistible conviction that having, in the first instance, been made the tool and dupe of the interested intrigues of others, and finding it too late to extricate himself from their toils, he had consented to heap upon my devoted head accusations and charges which a little patient inquiry would have showed him to be unfounded.

I am well content, gentlemen, to be judged by a court, every member of which, I feel convinced, will sympathise with such feelings as these; who are keenly alive to the vindication, beyond all other things, of the rules of gentlemanly dealing and honourable spirit, in a profession, of which honour is the undying watchword.

With respect to the fourth and fifth charges I have little more to add.

I only have to entreat you, gentlemen, impartially and indulgently, to consider all that I advanced in my defence, the length of my sufferings, the apparent uselessness of the demand of my sword, three weeks after my arrest, the sudden disclosure of the mission, and the intensity to which my feelings were worked up. I can only say, gentlemen, as I said before, that if you still think that the charge in law holds good, and the act of dealings was an improper act when viewed by the light of military etiquette and military discipline, you will accept my heartfelt and sincere apology, and condone the offence.

The same pleas are to be urged in reference to the fifth and last charge, with the additional ground of mitigation and excuse supplied by the extraordinary action taken by the Commander in Chief, in refusing, of his own authority, to allow my witnesses to be summoned, and insulting me with the public declaration, for which at the time he had no possible grounds: viz., that I had summoned my witnesses for the purpose of defeating justice.

That these orders were illegal, and beyond his Excellency's authority, is sufficiently proved by the letter subsequently written by the Adjutant General, which I quoted in my defence.

You, gentlemen, can understand, and will not fail to appreciate what feelings of consternation and despair assailed me when that communication was received.

Military Duty.

There is a question, gentlemen, connected with this part of the case which I touched but lightly on in my defence, because, as I then observed, my plea in regard to it had been overruled at the commencement of this trial; I refer to the question of *military duties.*

The prosecutor having again adverted to the same question in his reply, and having adduced two facts, in support of his view, which have not been before discussed, I think it advisable to notice them briefly. These arguments are, *first,* that his Excellency is as competent to take public military action against me for neglect or misfeasance, in regard to articles of his Excellency's private property, as the commanding officer of a regiment would be to take such action against the president of a mess committee embezzling or otherwise committing misfeasance in respect of the stores of the mess.

Gentlemen, this is, I conclude, in the prosecutor's eyes, a plausible comparison; the only misfortune is that the analogy fails in the only point in which its application is important, and I cannot refrain from expressing, gentlemen, my extreme astonishment that the prosecutor, himself a military officer, should have attempted to establish an analogy which is

27 August 1866. so obviously unsound and misappropriate, and allow himself for a moment to fancy that it would escape detection or be spared from exposure. The prosecutor, gentlemen, has appealed to your military experience in this matter, but that experience, I apprehend, will have taught you that a regimental mess is a public body, publicly recognised by the standing orders of the army, and that the commanding officer has military duties connected therewith laid down and defined by those rules.

The president of a mess represents the interests of a large military body, not only his own. He is trustee for their interests and custodian of their property, and under these circumstances a commanding officer would doubtless be competent, at all events in the first instance, to take military action in any matter in which the regimental interests had suffered at the president's hands.

But his Excellency represents no interests but his own; he is the sole and undivided proprietor of his own wine and provisions, and as such I would submit has no *primâ facie* authority to take public and professional action for misuse or misfeasance connected therewith.

The distinction is so obvious, and so utterly beyond cavil or dispute, that it is not worthy of further discussion. It is in melancholy keeping with many other of the prosecutor's propositions, and needs only to be read to be rejected.

The second argument is, that I myself accepted all the duties of aide-de-camp as a military duty, as proved by my letter of the 16th April. Gentlemen, that letter of mine has been read by the prosecutor, and I will take the liberty of reading it once more.

Letter of 16th April, to Major Flood.

"Sir,

"I am in receipt of your letter of yesterday's date, as also of a memorandum you enclosed of his Excellency the Commander in Chief's, directing me to understand that I am to continue in charge of Sir Wm. Mansfield's establishment, as a *military duty*. You will oblige by conveying to the Commander in Chief an assurance, on my part, that I very much regret that I should have caused his Excellency any annoyance, with reference to my holding this charge, *which I now view in a different light from that in which I looked upon it till very recently*.

Gentlemen, I need hardly point out what you must yourselves at once perceive, that to quote a letter of 16th April in *interpretation* of duties performed during six months prior to that date, to attempt to prove that in September 1865 I entertained particular views regarding those duties, because in April 1866 I said I never had entertained them before, this, gentlemen, I submit, is an instance of back-handed logic which will baffle even the tried ingenuity of the prosecutor to establish. Such reasoning will not, I apprehend, have much effect upon your minds. The real truth is, that the note produced *proves exactly the opposite of what the prosecutor wishes it to prove*, because it establishes, beyond contradiction, that as far as my views of those duties went I never had, before the receipt of the memorandum referred to in my note, regarded them in that light.

Captain the Honourable *Walter Harbord*, 7th Hussars, Aide-de-camp, to his Excellency the Commander in Chief in India.

Mr. *Abbey*,—"Servant and slanderer."

Character. I HAVE now arrived at one of the most remarkable portions of the prosecutor's address, and venture to solicit thereto your undivided attention.

In several parts of the evidence, oral and written, the question of my *character* has been mooted, and with the exception of an anecdote of two years old, regarding some indefinite and scarce remembered misunderstanding with an anonymous quartermaster at Bombay, and the social peccadilloes described in his Excellency's memorandum, nothing was adduced to my disparagement; and I think, gentlemen, you will have been satisfied, that even by the testimony of the Commander in Chief himself, my character for scrupulous honour, integrity, and uprightness, was emphatically established.

Thus it became altogether superfluous to produce any weaker evidence on the point.

In addition to this testimony I have here a statement from Sir William Mansfield, acknowledging that he wrote to recommend me to Sir Bartle Frere, for the appointment of under secretary to the government of Bombay.

This question of character having been thus set at rest in what I presume, gentlemen, you will consider a most satisfactory way, what was my astonishment to find the prosecutor taunting me with having given no evidence to character.

These, gentlemen, are his words:

"If the prisoner intended, under the circumstances of the present case, to rely on his general character, he ought to have established it by favourable testimony."

And after thus ignoring the emphatic testimony of the Commander in Chief of the army, and writing as if his Excellency's evidence to character was nought, the prosecutor launches forth into one of the most extraordinary perorations that ever was penned, or, as I am inclined to believe, was ever conceived.

He makes a deliberate, and may not I say a malicious, attack upon my general character, from the "expedients resorted to in the course of this trial," one of the most heinous of my

my crimes being that of "keeping Sir William Mansfield six whole days before the Court." 27 August 1866.

I ask you in all seriousness, gentlemen, whether such a mode of argument was ever adopted in any prosecution in the world.

I appeal to you whether such a mode of personal attack in regard to matters of which you, gentlemen, were at the time, and now are, the only legitimate judges, is justifiable or fair? even if the facts specified were commonly correct, which I shall have no difficulty in proving they are not.

But, gentlemen, as the attack has been made, forming with the many other incidents in this case a new epoch in military jurisprudence, I must not, in justice to myself, pass the subject over in silence; nay, I must meet each point selected for this assault fully and unreservedly, and let the prosecutor, who has raised the question, be responsible for the results.

With respect then to the first in the catalogue of those offences (which taken together are quoted as evidence against my character), viz., the protracted cross-examination of Sir William Mansfield, I would observe, in the first place, that his Excellency himself is wholly and solely responsible for the inconvenience he suffered.

With every desire to avoid speaking with discourtesy of the Commander in Chief, I must again direct your attention, gentlemen, to his Excellency's deposition throughout, and ask you to say whether, instead of confining himself to matters of fact, he did not continually wander into superfluous discussions, irrelevant remarks, and, more than once, indulge in insulting insinuations regarding myself.

And if this is so, with what justice can I be assailed if my cross-examination was protracted? As to the prosecutor's remark, "that nine-tenths of the questions" are now seen to have been entirely irrelevant "to the merits of the case, as they are now disclosed, and wholly without aim or definite purpose," I will only observe, that it is easy to be "wise after the events," but not so easy to perceive what course events will take. Should it ever happen to the prosecutor to be placed in my position, and have his accuser in the box as the principal witness, before any of the other evidence has been taken, and while yet in ignorance of the character which that evidence will assume, he will probably consider, as I did, that prudence required every statement to be tested and every motive scrutinized by cross-examination, which is well said by Simmons to be the great test of truth.*

The next offence which is brought against me, and to which your attention is directed by the prosecutor, is what the prosecutor describes as "that most disgraceful question" in regard to the "Port Canning shares."

Now, gentlemen, setting aside the unreasonableness, if not the absurdity, of a prosecutor calling a question put by a prisoner to a witness "disgraceful," certainly a novel feature in a judicial trial, I must ask you to remember *why* that question was put; what its evident interest and bearing was, and out of what it originated.

You will then be able to say whether the prosecutor is justified in using such strong and abusive words.

The simple history of the question is this: his Excellency had with no other conceivable motive, as far as can be imagined, than a desire to cast a slur upon me, volunteered to accuse me of being "jealous" and "grasping," thereby implying that my service, though efficient, was not disinterested.

With the sole view, as I can honestly assure the Court, of showing that I had rendered him a service to which the utmost ingenuity could not affix any other but disinterested motive, I desired to elicit from his own mouth the fact under notice.

That fact was calculated to show, and does show, that I was instrumental in obtaining from the friend in whose house I was living certain "Port Canning" shares, which were of great value.

On this his Excellency again enters upon a long history of objects and motives, defends himself upon points on which neither charge nor imputation was thought of, and the prosecutor publicly accuses me of "disgraceful" conduct in merely asking the question, taking upon himself to say that I insinuated that Sir William Mansfield had been in partnership with myself, in "disreputable share gambling."

With what amount of justice these and other accusations, which I had noticed are thus thrown broad-cast over the prosecutor's address, I leave you, gentlemen, to say. Had this aspersion not formed part of that whole attack upon my character which I am now considering, I should have held these remarks of the prosecutor unworthy of notice, inasmuch as neither I, nor any one else, as far as I can see, is disposed to inquire whether his Excellency chose to sell the shares he purchased when they were at a premium, or deemed it wiser to keep them, as many did, till they were depreciated.

My object simply was to show that I was ever regardful of his Excellency's interest, and that the charge of grasping and jealousy was, to say the least of it, ungracious.

The next item of the indictment against my character refers to Captain Harbord and Mr. Abbey.

I quote

* I quote the passage, page 363, paragraph 971 (cross examination): "Cross examination is justly regarded as the great test of truth. The opportunities which a witness has had of ascertaining the fact to which he testifies his ability to acquire the requisite knowledge, his powers of memory, his situation with respect to the parties, and his motives, may all be severally examined and scrutinized."

27 August 1866. I quote first the words of the accusation as regards Captain Harbord, and ask, gentlemen, your serious and careful attention to them:

Then again I beg you to recall the questions addressed to Captain Harbord—questions which, even taken apart from the replies, placed the prisoner in the dilemma of either disbelieving his own insinuations, which would, of course, be shameful, or of having lived without repugnance on terms of the greatest intimacy with a man whom, to say the very least, he believed to have been guilty of perjury. Captain Harbord's answers to those questions were as thoroughly satisfactory as his determination to answer them was honourable to himself; nevertheless, although (as it now turns out), the prisoner has not the smallest reason or wish to deny anything which Captain Harbord proved, he has twice repeated his attacks on that gentleman. Once, rather than *not* do this, he exposed himself to the censure of the Court for falsifying its proceedings, and he has again repeated the injury in his preliminary defence.

Gentlemen, you will, I imagine, agree with me in thinking that these sentences contain matter of a very serious character.

The charge, for such it is, appears to contain the following items of accusation, viz.:—

First. That I put the questions to Captain Harbord at all.

Secondly. That by putting them I placed myself in the dilemma described.

Thirdly. That I twice repeated my attacks on Captain Harbord, and

Fourthly. That I falsified the proceedings of this Court.

I will crave your patience, gentlemen, while I deal with each of these counts of charge "seriatim."

And first, in regard to the fact of putting the questions.

On this point all I need observe is that the power of invalidating testimony by cross-examination as to the general character of a witness, is a power expressly and carefully provided by all law, military and civil, as I have already shown by a quotation from Simmons.

Now a power which the law thus pointedly and expressly concedes for the ends of justice every one has, I presume, the right, without let or hindrance to exercise, and in the exercise of that right, subject to certain objections as to the particular questions, I received, gentlemen, your sanction.

In regard then to the mere putting of the question, I need say no more.

With respect to the *second* count, which refers to the dilemma in which the prosecutor says I placed myself, I must demur to every part—every word of the allegation. In the first place how can the prosecutor divine how much of the matter referred to in the questions I was myself acquainted with, or for how long I had known them?

How does he know that I did live on "terms of the greatest intimacy" with Captain Harbord? How can he venture to assert that I felt "no repugnance" in associating with him? How can he presume to say that I believed him to be guilty of the specific crime of perjury?

Without a certain assurance of these things, which affect the inner feelings of my mind, it is simply childish on the part of the prosecutor or any one else, to attempt to turn the tables on me by such hypothetical imputations as these, and I leave them as they stand without any attempt at refutation, save by simply denying that I ever was on "terms of the greatest intimacy" with Captain Harbord, and submitting that, whatever I did know of his character, I did not consider myself called upon to be champion of the honour of his Excellency's household, or public accuser of its inmates.

The duties imposed upon me, in what his Excellency calls his "service," were sufficiently onerous and engrossing to give full occupation to my time, and if I withheld disagreeable facts which I knew, or disguised "repugnance" which I felt, it is not for Captain Harbord or the prosecutor to cast my reticence in my teeth.

On the *third* count, viz., the alleged "repetition" of my *attack*, I need only state that the memorandum which I put in for the perusal of the Court was, as stated in it, simply an explanation of the motives which induced me to put the questions—motives which I knew had been busily misrepresented by Captain Harbord and his friends. My object in submitting that memorandum was to disabuse your minds, gentlemen, in case such misprentations had reached your ears.

The second so-called "repetition" is contained in the preliminary address read by me before the Court on the 2nd August 1866, in which I explain my reasons for not considering it necessary to summon witnesses for the defence. That such an explanation *was* necessary and due, gentlemen, to yourselves, I cannot doubt you will perceive.

Had not the failure of the prosecution enabled me to dispense with these witnesses, I was prepared to produce evidence in the matter of Captain Harbord's general character, and should have summoned many witnesses for the purpose.

The necessity no longer existing, I was, as I stated in that address, glad to be able, with safety, to abandon the matter, and did so abandon it.

With what justice the prosecutor has designated this as a repetition of my *attack* upon Captain Harbord, I leave you, gentlemen, to judge. I myself should be more astonished at the charge, had not astonishment been already exhausted by the accumulation of wonders which this case presents.

But when I find myself accused of "taking a liberty" with his Excellency, and adding to "injury," by paying his Excellency's bills; when I find a question, put merely to show

that

that I had rendered disinterested service to his Excellency, perverted into an insinuation that his Excellency had been my partner in "disreputable gambling transactions," it appears to me that all rules of logic and canons of interpretation have been, for the purposes of this controversy, altogether lost sight of. 27 August 1866.

I thus cease to wonder that an expression of my pleasure, that I am able to relinquish a painful subject, followed by its actual relinquishment, is under the new system of etymology and syntax, distorted into an attack, and quoted to the injury of my character.

As for the remark, that I had "not the smallest reason (as it now turns out) or *wish* to deny anything which Captain Harbord proved," which is mentioned as an aggravation of my attack, I have already shown that the so-called attacks were, one, a mere explanation of motive submitted for the satisfaction of the Court: the other, an act of kindness and consideration towards Captain Harbord, and it is superfluous to say more.

The third, viz., that "rather than not do this (that is, repeat the attack upon Captain Harbord) I exposed myself to the censure of the Court by falsifying the proceedings," I respectfully submit is another instance of misrepresentation.

You, gentlemen, will remember that on the day the discussion arose regarding the report in the "Pioneer," Mr. Taylor, who knew all the circumstances that had occurred the day before, was absent; the only mistake that really had occurred was the statement in the "Pioneer" that the memorandum had been read "*in Court*," instead of "*by the Court*," as it really had; and, however imperfect the explanation of the occurrence may have been, and to this day I myself am only conscious of a confusion which I cannot penetrate, I was *never* accused, nor, I hope, gentlemen, supposed to have committed what the prosecution now unwarrantably states, viz., the crime of "falsifying the proceedings," my memorandum having been read by the Court, and returned to me with the President's note to that effect, was passed on to Mr. Allen with the other papers, and there my action ceased.

My own impression was, that having been so read, it might legitimately be published, and for the sentence which appeared in the "Pioneer" I was in no way responsible.

I have thought it advisable to notice these several counts in detail, that it might not be said I wished to avoid any imputation, however trifling, especially when brought forward for the purpose of damaging my character.

But there is a more serious question by far connected with this portion of the subject, and that is the real state of things, as far as Captain Harbord is concerned, and the actual grounds on which I first put the questions to him, on matters which, till I found it was unnecessary, I had intended to substantiate by evidence.

I, gentlemen, had, as you are aware, abandoned, cheerfully abandoned, the subject. But the prosecutor has revived it, revived it to my serious prejudice, and drawn a comparison between my "disgraceful" conduct in putting the questions and Captain Harbord's "*honourable*" conduct in answering; and all this he has done, gentlemen, for the purpose of prejudicing me in your eyes, and inducing you to give verdict against me.

It becomes, then, gentlemen, my absolute, though painful, duty to vindicate myself, and state without reserve the information I *do* possess in regard to the gentlemen whose honourable conduct is thus publicly paraded in invidious comparison with myself.

Gentlemen, Captain Harbord has told you that he "*heard* he had been dismissed from a masonic lodge, but that he believed it was for speaking lightly of the order." But I affirm, without fear of contradiction, that Captain Harbord *knows* that he was publicly expelled from the masonic body by order, or at least with the concurrence, of the grand master in England, that records of his expulsion are in every lodge in India and England, and that whether the offence, in punishment of which such grave and public action was taken, amounts to the legal crime of perjury (a point on which it would be difficult to get a mason to speak), or merely to a moral breach of faith, the whole occurrence is such as must be seriously damaging to the "general character" and "general credibility" of the witness, which was my object in mooting it at the time.

Again, gentlemen, you have heard from Captain Harbord, what, indeed, he could not deny, that his name was withdrawn from the ballot board of the Bengal Club, and he has told you on oath that this was because there was a dispute between the lawyers and officers.

I again say that I challenge inquiry that it was the feeling regarding his "general character" which induced his friends to take his name down before the ballot could commence.

He has, again, denied that he was "publicly assaulted" at the Simla Club.

I again assert, without reservation, that whatever play Captain Harbord may make on the word "public," he *was assaulted* at the Simla Club in the presence of several people, and that the publicity was more than sufficient to carry with it dishonour and disgrace.

But, before closing this subject, I would wish to make some observations on the evidence given by Captain Harbord.

The prosecutor has said that I could have no object or wish to disprove anything which that gentleman said.

It is undoubtedly true, as I observed in my defence, that Captain Harbord's evidence was so weak that it would not be necessary for me to invalidate it by bringing proofs in regard to his general character; but, as the prosecution takes advantage of that concession on my part, and endeavours to pervert it into an admission of the harmlessness of Captain Harbord's testimony, I feel bound to explain, what I before omitted to notice, that, though intellectually weak, almost to childishness, the intent and purport of his evidence was as

27 August 1866. mischievous, if not more mischievous, than that of any other witness who made deposition in the case.

If the nice distinction which Captain Harbord drew between the relative criminality of eating and drinking is puerile, the "animus" of his other answers is beyond dispute.

Having joined, as he admits, in the entertainments at Mahassoo, no reasonable man can doubt that, whatever crime I committed, he was an accomplice, or at least an abettor in its commission; and it will, probably, be a puzzle to all who read the proceedings of this trial to say by what auspicious destiny he escaped arraignment with me.

But, however this may be, he *knew* that I must have intended to recover the value (at all events, of part of the stores consumed), because I myself, as he says, proposed to credit him in payment of his share with a sum of his money in my hands.

Should you not have expected, gentlemen, to find a brother officer, cognisant of this fact, pleading, at least for the legitimate construction to be put upon this circumstance, a circumstance which I submit is in itself sufficient to prove the all-important fact that my "intent" was to recover, and, therefore, *not* to "defraud."

Would it not, gentlemen, have been more suited to the high and honourable feeling of a British officer to have made some demur before he consented to form part of that secret conclave in the private chamber of his Excellency, where my acts were canvassed and evidence taken behind my back? And does not his evidence, weak as it was, clearly exhibit the wish, the desire, to aid in my downfall?

What meant that voluntary assertion, that he himself was so particular about wine that he brought up his own from Calcutta? What the subtle distinction between wines and stores?

And if further proof is wanting of the covert "animus," all the more insidious because it *was* covert, which actuated the mind of Captain Harbord, I will ask your attention to the fact of his having (of course, under previous understanding with the prosecutor) referred to a pic-nic party given on another occasion by himself and Captain Christie, when the expenses were paid almost immediately afterwards.

What, gentlemen, was the *object* of this important revelation?

Obviously to draw a *contrast between that pic-nic* and those given by me, and thus cast suspicion on me for the delay which had occurred in these recoveries; an invidious device, but fortunately frustrated by the Khansamah's simplicity.

You will doubtless remember, gentlemen, the following questions and answers during the examination in chief of the Khansamah:

"*Q.* Have you ever supplied any other officer of the Commander in Chief's staff with tiffins, dinners, breakfasts or suppers?—*A.* Once Captain Christie ordered a few articles, such as a couple of fowls, chicken, salad and Hunter's beef, amounting in value to five or six rupees; there were no English stores supplied; no other member of the Commander in Chief's staff was so supplied.

"*Prosecutor.*] The item detailed might be left out.

"*Prisoner.*] I beg that nothing may be left out, the answer should be recorded as given.

"*Prosecutor.*] Yesterday the prisoner wished the answer curtailed, which was the reason of my making the remark.

"*Prisoner.*] The prosecutor has evidently mistaken what I stated. I suggested that the witness should be compelled to give direct answers to all questions, and not be allowed to take up the time of the Court and others, by wandering from the subject under investigation by the Court."

The prosecutor, gentlemen, as you will perceive, wished the details of this celebrated pic-nic to be omitted; and I dare say, I may have been deemed to have offered at the time a vexatious opposition to the omission, but these details were important, for what do they show; why, that this famous entertainment introduced for the purpose of a damaging contrast, to show that when Captain Harbord took liberties with his Excellency's stores, payment was immediately made, consisted of "two fowls," beef, and chicken salad; not a single thing (unless, as astutely suggested by the interpreter, the oil and vinegar,) being taken from his Excellency, but supplied from the bazaar.

Now this matter, too trivial to deserve notice, in my defence, becomes important when the prosecutor holds up Captain Harbord's honourable and immaculate character in damaging contrast with my own, because it shows, what *gentlemen* will scarcely recognise with satisfaction, the most deliberate desire carried out in a most disingenuous way, to cast as much slur on me as he could safely accomplish. It shows, moreover, that I was but prudent, where such subtle and dangerous purposes existed, to invalidate his testimony before he spoke.

There now remains one item only of the prosecutor's closing catalogue of sins and offences, which requires notice. This item is thus indicated:

"One more remains, which I leave without comment to your appreciation; those indirect insinuations against a lady worthy of all the prisoner's respect, which I, at least, cannot read with common patience."

Gentlemen, I venture to protest against the manifest injustice of this imputation; I appeal to you to say whether it was I or Sir W. Mansfield himself, who first introduced the lady referred to on the stage of this controversy. I appeal to you to say whether, when it became necessary to produce Lady Mansfield's notes, I did not voluntarily inform the President that I only required such parts as were indispensable to be read, there being other parts which it might be distressing to her Ladyship to be made public.

I ask whether I have not with great delicacy refrained from all disrespectful dealing with her

her ladyship from first to last, and whether this imputation, like all the rest, is not utterly unfair and utterly without foundation. 27 August 1866.

And even now, gentlemen, in spite of the unjustifiable aspersions cast upon me by the prosecutor, I will not lift the veil, or show more clearly than I have already indicated, the part which Lady Mansfield has taken in this prosecution, or the spirit she has infused into these proceedings.

Conclusion. Recapitulation.

And now, gentlemen, having met as fully and as unreservedly as possible all the questions mooted in the prosecutor's reply, I will very briefly recapitulate the salient points both of law and fact on which I rest my defence, and in consideration of which I venture confidently to claim from you an honourable acquittal.

First then, in regard to the law, I submit I have fully shown that the open and undisguised "taking" of his Excellency's wine and stores for our Mahasoo picnics, was *not* such an act as is contemplated in the legal term "unlawful," or such as being palpably evil in itself, raises a legal presumption of criminal intent, and that consequently, the presumption of innocence necessarily arises, and the burthen of proving "intent to defraud," rest solely with the prosecution.

I have further shown, by quotations from standard authors, that in such a case no conviction can righteously take place, unless the proof of guilty and felonious intent *is so strong and positive* that no *doubt* is left.

In regard to the *second* legal principle adduced by the prosecutor, viz., that, because I have suppressed evidence, I am to be the victim of all unfavourable presumptions—I have shown that having only withheld evidence with good and sufficient cause, the principle and the maxim are totally inapplicable.

On the questions of fact, I have shown that the evidence furnished by the prosecutor in regard to the fraudulent *intent* charge, rests wholly upon suspicion, and upon no single fact which in itself indicates guilt; on the contrary, that all the concomitant circumstances are those which render the idea of guilty purpose absolutely incredible; while in regard to the second instance of the first charge, I have made it, I fancy, clear, that not the smallest scrap of evidence has been produced even of the *fact* itself.

With respect to the second and third charges, I have argued, first, that the charge is bad in law for inaccuracy, and, secondly, that under the circumstances established, the neglect or reluctance to produce books and papers, when the law allowed me to reserve my defence, was the legitimate exercise of a legal privilege expressly conceded to me.

The declining to give my sword, and the use of the expressions charged as insubordinate, in my letter of the 22nd June, I have, both in my defence and rejoinder, explained by the distressing circumstances under which the acts were committed; and in regard to the entire matter of this painful controversy, I have explained every point susceptible of explanation, have evaded nothing, and withheld nothing, and have suggested to you, gentlemen, to conduct any further inquiry into the accounts which you may think fit to accomplish.

On the style and spirit of the prosecutor's address, I have ventured to offer some remonstrance, and I do not apprehend that you will consider my remarks uncalled for.

And now, gentlemen, I have little more to add, save to ask your solemn consideration of the whole circumstances of the case as developed before you by the evidence and addresses of the prosecutor and myself.

But I will first entreat you, not without reason, to discard, as I feel sure you will, from your minds whatever reports may have reached your ears in regard to myself, or my doings; I ask this, gentlemen, because I am well aware that many tongues have been busy with my name from the first commencement of my differences with the Commander in Chief: only two days since I was told by several individuals that late discoveries have been made which, had not this trial arrived at its present stage, would have ensured my conviction; and that this had been stated by the Deputy Judge Advocate General.

On this I immediately wrote to Major Young, and received a very satisfactory reply, which I take the liberty of reading.

Notes.

"Dear Sir, "Simla, 25 August 1866.

"I HAVE been told that you were heard to say words to the following effect, viz., that had the general court martial now sitting, and before which I have been arraigned, not reached its present stage, there were things, which had recently come to light, which would have shown that I was guilty of what is charged against me before that tribunal. I will thank you to inform me whether you made any such statement, or any one of a like nature, and to whom.

"Yours faithfully,
(signed) "*Scott Jervis.*"

"To Major J. N. Young,
Bengal Staff Corps."

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27 August 1866.

"Dear Sir, "Simla, 25 August 1866.

"It will be a satisfaction to you to know that I have never made any such statement as is referred to in your letter of to-day, and that as far as I am aware nothing has recently come to light which the prosecutor can have reason to regret being unable to lay before the Court.

"Yours faithfully,

"Captain E. S. Jervis. (signed) "*J. N. Young.*"

I have mentioned these circumstances to show you, gentlemen, what influences have been at work to prejudice the minds of the public, and to justify my appeal to you on the subject.

Such whispered calumny often affects the minds of the most just and honourable of men, even unknown to themselves; and the bitterness with which my name has been assailed in private circles by some influential parties might possibly have had effect when least suspected.

And, gentlemen, I think I here may say, that if half the labour which has been expended in efforts to invent and accumulate matters of imputation against me had been devoted to the less exciting but more charitable purpose of discovering some explanation of the circumstances which have led to my arraignment, this painful trial would never have taken place.

But, gentlemen, what has happened cannot be recalled.

It is now your sacred duty to weigh well the facts, to compare the evidence, to ask yourselves not only whether such crimes as are imputed to me are proved; but whether you do not feel, in your inmost hearts not only the legal proof has altogether failed, but that my commission of such crimes is little less than a moral responsibility.

I entreat you to consider gravely, and on your consciences, whether the whole history of jurisprudence, or the annals of crime, can show you such a phenomenon as a gentleman of untainted honour, an officer of the British army, with his whole future prospects dependent on his reputation, making voluntary shipwreck of his name and fame for a few bottles of wine and tins of provisions! perpetrating theft in open day, before a cloud of witnesses! and, when discovered and accused, meeting accusation, even of a Commander in Chief backed with all the influences and power of his position, with indignation and defiance.

Gentlemen, the Court Martial is a sacred institution, and on its members devolve most sacred functions; taking its origin in the earlier days of English history, and sanctioned by the wisdom of succeeding generations, the military tribunal is based upon the noble principle that without reference to intellectual subtleties or the technicalities of law, a jury of officers will ever render substantial justice to their brother soldier.

To this day the Court Martial, resting on sound constitutional bases, is the bulwark of military discipline; it is as much the shield of the weak as the sword of the strong.

It is, I need hardly remind you, essentially, gentlemen, a court of honour; and while regulating its judgments by the established rules and principles of law, it ever seeks to vindicate the honour as well as the discipline of the army, and the chivalrous spirit by which honour in its highest sense is sustained.

To the great principles and noble sentiments which form the peculiar characteristic of your tribunal, gentlemen, I now confidently appeal.

I am presumptuous enough to hope that, in spite of the manifold presumptions which the prosecutor has asked you to accept against me, you will believe my simple statement of the facts. I am confident that as men you will understand and sympathise with the feelings which were aroused by the treatment I received; I feel sanguine that as gentlemen you will condemn the *ex parte* proceedings which first brought me into the position in which resistance was almost a necessity.

And, gentlemen, you will I think forgive me, if once again I say that, in the matter of the first charge in all its instances, I am an innocent man or a felon, and that if, as hope prompts me to believe, your conclusions will lead you to acquit me, that acquittal will be of little value to me if it be not "full and honourable."

If for a single moment I contemplated committing fraud against Sir William Mansfield; if, with intent or conception of theft, I took a shilling's worth of his property, I deserve the sentence, the unmitigated sentence which is due to felony.

If no such detestable purpose entered my mind, I deserve at your hands an unreserved absolution and honourable deliverance.

To your sense of justice, Mr. President and Gentlemen, to your discernment between good and evil, to those honourable instincts which tell you that meanness, concealment, and subterfuge are the accompaniments of guilt, and open dealing its opposite; I now appeal to you, gentlemen, the arbiters this day of my fate; I now commit myself with the solemn assurance of my innocence, and the righteous confidence which innocence ever inspires.

During

During the reading of the rejoinder the prosecutor objected to that portion which commenced to state the prisoner's view of the facts connected with Captain Harbord's expulsion from Masonry. 27 August 1866.

By *Prosecutor.*] Before such statements as these, viz., regarding what the prisoner has heard about a witness, are received, I respectfully submit, that the Court should consider, 1st, whether, at this stage, they shall be received at all; 2nd, whether they should be received at any time unless the prisoner is in a position to substantiate them by evidence.

By *Prisoner.*] No interference was exercised with the prosecutor's reply, and Captain Harbord's conduct in answering has been paraded publicly to my prejudice, and it is but fair I should answer his injurious remarks.

By *Judge Advocate.*] I submit that this is a point on which it is not allowable for the prisoner to produce evidence in refutation of Captain Harbord's statement, but that he is bound solely and entirely by that witness's reply to his question; and being so, the Court, too, can accept no other view. The prisoner's unsupported statement in contradiction should therefore, in my opinion, not be received.

The Court is closed.
The Court decided to permit the prisoner to continue reading his rejoinder.
The Court is opened, and the above read.
The Court rises temporarily for refreshment.
On re-opening, the rejoinder is concluded.

By *Prosecutor.*] There are some points to which I wish to offer a contradiction, especially connected with the evidence brought to the notice of the Court for the first time today, and which appears to be as new to the prisoner as it is to me, viz., the existence in Colonel Kirby's time of certain items of money paid into the Commander in Chief's chest. It has been stated that this evidence has been suppressed. I will not ask the Court to adjourn for the purpose, although the rejoinder is of such unusual length, that it is impossible for me to meet all the points on the spot. But if the Court will rise for 20 minutes I think I shall be able to record the principal refutations I have to offer, and which will take only a few minutes to read out.

The Court is closed.
The Court decide that, having the books before them, a sur-rejoinder is unnecessary and cannot be allowed.
The Court is opened and the decision read.

The Court adjourns at 20 minutes before 4 o'clock until Wednesday the 29th instant at 11 o'clock, when they will receive the summing up.

Twenty-sixth Day.—Wednesday, 29th August 1866.

The Court assembles at the same place at 11 o'clock in the forenoon. 29 August 1866.
President, Members, and Judge Advocate, are all present.
The Prisoner and Prosecutor appear in Court.

The Prisoner reads a small portion of his rejoinder which was incomplete, from want of the proceedings of the Court of Inquiry, from which a quotation regarding the previous examination of Abbey was required, and which the Judge Advocate had omitted to bring with him.

The Judge Advocate proceeds to sum up; his summing up is read and entered.

SUMMING UP BY JUDGE ADVOCATE.

Brigadier General Brind and Officers,

As the prisoner in his defence has only incidentally alluded to the objection made at the outset of the trial to the validity of the first charge, it is unnecessary for me to re-state my reasons for considering the same sufficient in point of law.

An objection is now made alleging insufficiency of the evidence to prove guilt on the 1st charge, on the application of the maxim of the presumption of innocence.

It appears, therefore, incumbent on me to state what I understand to have been the points which the prosecutor was bound in law to prove, so as to counterbalance this presumption, and to throw on the prisoner the necessity of proving his innocence.

The 1st charge alleges certain facts, and an intention connected therewith. The facts are not in dispute, except as regards the second instance, which may for the present be disregarded; the alleged dishonest intention is denied.

What then is the evidence by which an unlawful intention can be proved?

Excepting in the rare instances of an unlawful intention being openly avowed, intention can never admit of direct proof; it must be a matter of inference, the natural result of the facts put in evidence.

29 August 1866.

Now, in law, every man is presumed to intend the necessary consequences of his own acts, so that when an unlawful act is committed, the unlawful intention is presumed.

This presumption, however, is rebuttable, and will be strong or weak according as the prosecutor is obviously acquainted with attendant circumstances calculated to explain the intention. If there are such facts, a court would certainly require them to be proved.

On the other hand, the law requires of the accused the proof of all such facts as are peculiarly within his own knowledge.

To take a familiar instance: a soldier found at a distance from his quarters may be apprehended and required to produce his pass. No legal presumption of innocence would, in this case, require a previous reference to his regiment for the purpose of ascertaining whether the soldier had such a pass.

I will here explain that there are in law two recognised classes of presumptions; one absolute, the other conditional or rebuttable.

Of the former class, is the presumption that a child under seven years of age cannot commit a felony, and this the law does not permit to be set aside on any ground.

The latter class of presumptions, on the contrary, only stand good if not set aside by evidence; and as applied to criminal trials, their object is not so much to influence the judgment, as to direct the progress of the trial by deciding upon which party lies the burden of proof.

I will here notice what the prisoner urges as to the inapplicability to the acts committed by him of a counter presumption to that of innocence.

Now, I think it cannot be said that these facts differ in kind from other facts, whereon an intention to defraud is alleged, if it shall appear to the Court's satisfaction that there was an appropriation, to the prisoner's own use, of property held in trust for expenditure solely on account of the owner; and I will here quote a passage from a standard manual, "Roscoe's Digest of the Law of Evidence in Criminal Cases," regarding a presumption of an intention to defraud:—

"This presumption is very similar to that of malice; it is always made whenever the natural consequence of the act is to defraud, and no proof is necessary that such was the intention of the prisoner."

The Court will, therefore, consider whether the prosecutor has, in this case, undertaken to prove all that the law requires of him, and secondly, whether the proofs have been satisfactory; and, on the other hand, whether the prisoner has undertaken to prove such facts connected with the case as were peculiarly within his knowledge, and has succeeded in doing so.

The prosecutor then, as regards the first instance of this first charge, has undertaken to prove—

1st. That the prisoner committed an actual breach of trust by taking wines and stores, and using them for a purpose opposed to that for which they were intrusted to his care.

2nd. That they were taken without the knowledge of the owner, or of others competent to judge of the propriety of the use they were put to.

3rd. That such use was contrary to custom; that is, to the practice of the prisoner's predecessors in charge of the Commander in Chief's household.

4th. That these wines and stores have never been replaced, nor their value refunded; and,

5th. That no acknowledgment was ever entered in any of the house books of the purpose to which they were put; but, on the contrary, that so far as any entry has been made regarding them, namely, in the wine and store books, these entries were of a nature to conceal the purpose to which they were put, or, in other words, to write them off, as if expended for the ordinary purposes of household expenditure.

It does not appear to me that any other facts connected with this case fell necessarily to be proved by the prosecutor. I am, therefore, of opinion, that if the Court shall consider the above allegations as established *primâ facie* during the prosecution, they form a complete case for the prosecution, requiring to be either disproved or explained away by the disclosure of further circumstances.

The evidence adduced by the prosecutor may be briefly referred to as—

1st. That of the Commander in Chief and Major Flood, as to the nature and terms of the trust under which the prisoner had control over the household expenditure. 2ndly. The evidence generally showing that the taking of the wines was known only to the native portion of the establishment, and that of the stores was known to them and Captain Harbord, who has given his reasons for not having seen any impropriety in the act. 3rdly. The denial by Major Flood of any custom in accordance with the use made by the prisoner of the wines and stores in his charge, and the corroboration of his evidence by the production of the household books kept up at Bombay; and on the 4th and 5th points, the production of the household books kept by the prisoner.

With regard to the first, the prisoner admits that if he used for his own purposes the property in his charge, he was bound to see that the interests of the proprietor were not eventually injured; and to the second, he answers that the manner of taking the wines and stores sufficiently shows that there was no concealment; to the third, that a custom justifying what he did is shown by the supply of mutton from the household to the officers of the Bombay Army Staff, and the permission to them to use the services of the Commander in Chief's shoeing smith, coupled with the omission to recover charges on these accounts

accounts sometimes for long periods; as also certain incidents connected with the hotel bill at Umballa in April 1865, and the bills incurred with Messrs. Mackenzie, Lyall & Co., during the past cold weather; with regard to the fourth, while the omission to refund is admitted, an intention is declared to have been held to recover the value; and to the fifth, the entries in the household books are referred to as proof of an avowal of the taking.

The Court will judge, as regards the first, whether any means were taken to secure the interests of the proprietor against eventual injury.

2ndly. Whether the knowledge of Captain Harbord and the native servants as to the taking of the property extended to such particulars as enabled them to judge of the propriety or otherwise of the act.

3rdly. Whether, as alleged by the prosecutor, the circumstances connected with the mutton and shoeing charges were such as to differ entirely from those connected with the taking by the prisoner for his own use of wines and stores, or whether they exhibit a custom justifying the act of the prisoner, so that from his act a mere borrowing should be presumed, calling for no special explanation; or whether such favourable presumption is to be founded on any of the circumstances connected with the hotel and shop bills referred to above.

4thly. Whether the prisoner has made any such disclosure of facts peculiarly within his own knowledge as makes manifest an intention of recovering value of articles taken; and with reference to this, it is to be noticed that while in the defence the prisoner enumerates, among the materials, the arrival of which he was awaiting to enable him to prepare the statement alluded to in his note of 24th April to Lady Mansfield. "The memoranda of stores and wines used or lent;" these memoranda have not been produced to the Court in connection with this point, and in the rejoinder, the prisoner states that the consumption books and the bills of fare are the only records of consumption, and that all these are in the hands of the prosecutor.

5thly. The Court have the wine and store books before them, and will judge for themselves what is the proper reading of the entries in them.

There is a particular circumstance connected with this case, perhaps not falling directly under any one of the above headings, which may be here alluded to, and which is relied on by both sides; the fact of the payment by Captain Harbord of 220 rupees towards his share of the expenses. As affecting the case for the prosecution, it is clear that the mere payment is not of importance, for if the articles taken were to be paid for by the prisoner, it was only natural that Captain Harbord should be called upon to pay for his share.

What then remains for the prosecution is that the payment made on the 14th October is not entered to the credit of the Commander in Chief in the accounts before the Court, brought up to the 30th November.

The prisoner replies to this that it was unnecessary to make any partial entry until the whole transaction was ready for entry on the closing of the accounts, and that this particular statement of accounts up to the 30th November was not a closed account, but a rough statement or memorandum.

The prosecutor denies that this is a correct description of the prisoner's accounts in Book No. III., and points out that the entries tally as to amounts, though not as to dates, with the list of cheques in Major Flood's note, the amounts therein contained being completed by the entries in the prisoner's statement of the building account.

The correctness of this statement, which was prepared by an accountant employed by the prisoner, is denied in the rejoinder; his words are, "The credits in the building account were merely entered at random." The prosecutor further brings to the Court's notice various statements by the prisoner regarding his accounts, in which contradiction is alleged.

There are in this and other matters direct allegations of untruthfulness, as to the correctness of which it will be of importance for the Court to form a clear conception; as if supported, they go to the very root of the prisoner's defence, viz., an honesty of intention with regard to these accounts, which would be totally inconsistent with untruthful declarations regarding them.

On the other hand, a clearance on these points will be of material advantage to the prisoner.

These matters are severally, untruthfulness, 1st, in the prisoner's note of the 20th April to the Commander in Chief, in declaring that the house-books were complete to date, and in a state to show that nothing was wrong.

2nd. In the same note, saying that the Commander in Chief had seen a statement of accounts up to a recent date, whereas in his defence he alleged that no accounts had been made up. In the rejoinder, the accounts in Book No. III., however rough, are declared to be the general statement referred to in the note.

3rd. In the note of 24th April, in speaking of the impossibility of preparing a statement of accounts in the absence of the boxes with accounts, vouchers, &c., these being alleged on the part of the prosecution to have already arrived.

4th. In stating to the Khansamah on the 14th November, that the Commander in Chief was in his debt, in contradiction to the state of the accounts as shown in Book No. III., the opposed statements regarding which have been already contrasted. This book the Court will doubtless critically examine themselves; they will find, in addition to rough entries by Captain Christie, and a mere commencement of a build-

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ing account by Captain Jervis, the completed accounts on which Captain Christie transferred charge to Captain Jervis, and the accounts by Captain Jervis which form the matter now in dispute.

5th. In speaking of the Commander in Chief as largely in his debt towards the end of March, as opposed to the testimony of the Commander in Chief and the prisoner's own note of 5th May. As the testimony of the Commander in Chief on this point is declared by the prisoner to be entirely set aside, I must remind the Court that, as to the conversation which actually occurred, the testimony on oath of this witness is met by the unsupported contradiction of the prisoner. The counterfoils show that the several cheques had been paid, but they do not show that the Commander in Chief was informed that they had been paid, and proof of this alone could be conclusive that the conversation, as sworn to by him, was an impossibility. The recent references to entries in Book No. I., show that in Colonel Kirby's time it had not been very uncommon for him to lend money for household expenditure when the monthly draft had been expended. A reference to the book will show that Colonel Kirby always at once repaid himself on receipt of the next draft. But whatever once may have been the practice, and of this the Commander in Chief's evidence shows him to have been in ignorance, and further he was not examined as to the contents of this book, but only of Book No. II., the question, whether at the end of March the Commander in Chief was to his knowledge in debt to Captain Jervis, depends upon whether the Court believe his evidence or the prisoner's statement as to the conversation which occurred when the cheque for 4,000 rupees was paid.

I will now allude to the analysis of the accounts which the prisoner has requested the Court to have made. It is palpable that such analysis would only be practicable if all vouchers were in the Court's possession, and if these vouchers had been either admitted on both sides, or the Court had satisfactory evidence of their authenticity. Now the fact is, that the Court have not a single voucher of cash expenditure from 1st September to the end of April, with exception of the Khansamah's and Abbey's bazaar books, and according to the case for the prosecution, they are all in the prisoner's possession; they are, in fact, admitted to be so in the 14th and 15th paragraphs of the prisoner's letter to the Adjutant General, of 28th May, which forms Appendix H. of these proceedings:—

"14. With regard to the delivery to the Committee of the other books and papers in my possession, connected with these accounts, I regret I must, notwithstanding his Excellency's commands, decline to give them up.

"15. I cannot bring myself to see or believe that such a delivery in the present crisis can form any part of my military duty, or that his Excellency Sir W. Mansfield's order can be regarded in the eye of the law as a military order. Those papers are the only proof I possess of Sir William Mansfield's liability to me for a considerable sum of money, expended by me on his Excellency's account and now due to me. They also form proof of the accuracy of my accounts and the integrity of my dealings, and on this ground I claim a lien upon them; until I have done this, as, in the event of my being driven to sue for the balance due in a civil court, they are the only proof that I possess."

As regards the question of amount of wines and stores taken, the Court will have observed that, as regards the former, quantities have been given to a certain extent by the Abdar; and that, as regards the latter, specification of quantity is to be found only in the reference to the consumption book under date, 2nd October, in the evidence of the Commander in Chief.

Before leaving the subject of the first instance, I will make one more remark regarding the law.

The prisoner has informed you that it will be necessary to prove that he had the intent to defraud at the time of his removing the wines and stores to Mahasoo.

The question of exact time of conceiving a dishonest purpose has, however, no relation to the charge preferred against the prisoner. The distinction alluded to is one which has its appropriate place in deliberation on a charge of theft, for on such a charge, by the common law of England, there must be a specific conviction that the original taking was felonious, and it formed a good defence for a prisoner to prove that he took the article lawfully, whatever might be the result of other evidence to show that a lawful taking was followed by a dishonest misappropriation. The act would thus have become a breach of trust, which until of recent years was not a criminal offence, but mere ground for a civil action; or embezzlement, which required to be specifically charged. In the criminal law both of England and India, special enactments have been of late introduced, to obviate the effect of this nice distinction, which could only act to the detriment of substantial justice; thus, for instance, the subjects of the 56th, 57th, 58th, and 59th sections of the Indian Criminal Procedure Code are respectively as follows:—

"A person charged with criminal breach of trust may be found guilty of theft."

"A person charged with criminal breach of trust as a servant may be found guilty of theft or of theft as a servant."

"A person charged with theft may be found guilty of misappropriation or breach of trust."

"A person charged with theft as a servant may be found guilty of misappropriation."

But as, under the present charge of scandalous conduct in dishonest misappropriation of

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of property held in trust, it would be obviously impossible for the prisoner to plead that he had taken the articles originally with an honest intention, and to admit that there had been a subsequent act of dishonesty, the question of the exact time of conceiving a dishonest purpose can never come under the Court's serious deliberation.

The prisoner has, however, still further urged, in his rejoinder, that the whole case is upset by the admission on the part of the prosecution, that had there been anywhere found a note of an intention to refund, the charge would never have been preferred.

The true meaning of this admission, however, appears to be, not that an originally unlawful taking would have been condoned in consideration of a subsequent refund, or expressed intention to refund, but that from such a note it would have been inferred that there never had been a dishonest intention.

As perhaps the Court may consider the distinction between charges of theft or larceny, and breaches of trust, to require further explanation, I will here quote some remarks from Roscoe on embezzlement, which crime, in respect of there being originally no unlawful taking, is akin to breach of trust.

"The first possession being lawful, the act of embezzlement consists in a mere act of the mind without any outward and visible trespass, as in most cases of larceny, and in all crimes of violence. That the mental act of fraudulent appropriation has taken place has to be inferred from the conduct of the prisoner or from his own admissions."

Thus as regards the particular charge, the Court, supposing they believe a dishonest intention to have existed, may consider the mental act of fraudulent appropriation to have been conceived, either when the prisoner actually ordered the removal of the property to Mahasoo for his own use, or when he made entries regarding it in the consumption books; supposing again, that they hold it to be proved as alleged in the charge, that part of the stores so used were entered in the account books of the household, as expended on his Excellency's account.

As regards the 2nd instance of the charge, the Court have not received evidence that the sums referred to were entered in the bazaar expense book.

As regards the 3rd instance, there is evidence, as also the prisoner's admission, that Captain Jervis ordered the articles specified in the Commander in Chief's name, and appropriated them to his own use; and the question for the Court's consideration is, whether he did so dishonestly, which, under the circumstances, means, whether the prisoner had the intention that the bill of Messrs. Monteith & Co. should be wholly paid by the Commander in Chief.

The defence is, principally, that there was a practice which justified ordering articles in the name of the Commander in Chief, with a view to a subsequent contributive payment of the bill; and that in this instance the bill never having been presented, the prisoner could not have charged himself with his share.

The evidence as to the alleged custom has been already referred to in my remarks on the first instance; and the Court have further to consider what weight to give to the arguments of the prosecution, that the inclusion of these articles in the Commander in Chief's bill was from the first unnecessary, founded on Captain Harbord's evidence, that the prisoner had an account of his own with Messrs. Monteith & Co., and that the prisoner omitted an opportunity of arranging for the settlement of his share of the bill at the time of his conversation with Major Gordon regarding it.

As regards the fourth instance of the charge, the evidence shows that entries were made in the bazaar book of the travelling expenses incurred between Calcutta and Simla, from 25th to 29th March, on the prisoner's own account and also for the butler, Abbey, who travelled with him, and that charges for the latter only were properly admissible against the Commander in Chief. These entries were made by direction of Captain Jervis, and are marked with his initials.

It is asserted for the defence that these entries were made subject to future adjustment and recredit; that there was a convenience in doing so; and that it was the prisoner's own money, and not the Commander in Chief's, which was thus temporarily appropriated.

The intention of future adjustment is disproved, if the Court see reason to believe the evidence of Abbey, that the hotel bills and other memoranda, which alone would have enabled the prisoner to effect this adjustment, were destroyed in his presence and with his consent. It is for the Court to judge whether they consider Abbey a witness entitled to full credit, or that his credibility is weakened by the cross-examination.

To the prisoner's plea of convenience, the prosecutor opposes the evidence of Abbey, that at the time he had two accounts of expenditure, one against the Commander in Chief, the other against the prisoner, and that the prisoner's own travelling expenses might at the time have been entered in the latter.

The question of the Commander in Chief's indebtedness to the prisoner has already been brought under the Court's consideration. The Court themselves elicited the fact that wines and beer, the property of the Commander in Chief, were brought away from Calcutta, and it will be in the recollection of the Court, with what object they put the question, and the light they expected the answer would throw on the prisoner's intentions in the matter referred to in this instance.

With regard to the second charge, I am of opinion that the Court must necessarily consider and decide whether it was part of the prisoner's military duty, arising from his staff appointment as an aide-de-camp, to keep the private accounts of the Commander in Chief in regard to his household expenditure, in the nature of the duties devolving upon a mess

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president, according to the analogy suggested by the prosecutor; for, if it was the prisoner's military duty to do so, then it was his duty to obey an order for the production of the accounts of such expenditure, in the same way that it is the duty of a mess president to produce mess accounts when called upon by his commanding officer, for whatever purpose, whether for examination and audit or for transfer to another officer; and on the other hand, if the Court should be of opinion that the keeping of these accounts was no part of the prisoner's military duty, I am of opinion that the circumstances alleged in this charge will not be found to establish a military offence, and that the prisoner's defence will be good in point of law; and, that being excused at a court of inquiry from taking part in the proceedings, and from authoritative examination, the accused person is also excused from an authoritative demand for the production of documents if not held by him as part of his military duty.

As regards the denial in the defence, that no order was received by the prisoner, but only a request, the Court have knowledge of the custom of the service as to the form of diction adopted in the communication of written orders; but I will here note a remark made by the late Commander in Chief, Sir Hugh Rose, in General Orders of the 13th July 1863, when publishing to the army the trial by general court martial of an officer:

"The Court have been in error in acquitting Lieutenant —— of repeatedly refusing to return the letter called for by his commanding officer. It is proved by evidence that the commanding officer three times requested Lieutenant ——— to return it, and that he three times refused to do so. The fact that the two first requests were not in an official form is immaterial, and to establish the principle that orders so conveyed are invalid might be attended with grave consequences. A military order is perfectly valid, no matter in what form it is conveyed."

The charge had alleged that the prisoner disrespectfully and insubordinately refused to return to his commanding officer an official letter sent to him for perusal, although repeatedly ordered to do so. The prisoner was convicted of the charge, with the exception of the words "disrespectfully and repeatedly;" and it will be observed, that the order which the prisoner was found guilty of refusing to comply with, was conveyed in the terms of a request.

The word "invite," alluded to by the prisoner as having been used in another communication from the Adjutant General, not being the usual form of conveying an order for attendance, was probably intended to intimate an option.

The circumstances of the third charge are, in some respects, dissimilar, but it appears to me that with the second it stands or falls upon the Court's decision as to the duties of an aide-de-camp.

To aid the Court in forming an opinion on this point, they have had the evidence of the Commander in Chief as to the opinion he himself, as head of the army in India, holds upon this subject, and also as to a corresponding custom on the part of his predecessors; further, that a military custom holds good if not opposed to regulations and the interests of discipline.

The Court have also heard read the prisoner's acquiescence in the view of these duties as military duties, in his note of 16th April. The prisoner in his rejoinder speaks of this acquiescence as of no avail with reference to occurrences in September; but, I here speak of it in connection only with occurrences in the following month of May; and, I may here remark, I at the outset gave it as my opinion that those occurrences in September, which form the subject of the first charge, have no connection with the question of what are the military duties of an aide-de-camp.

It is in connection with these charges that the Court will consider, I presume, what opinion should be formed as to the circumstances under which the prisoner ceased to belong to the personal staff. This question has no direct connection with any of the charges, but in connection with it the prisoner attributes so much harshness and injustice to the Commander in Chief, as—if not to constitute an entire excuse for whatever insubordination there may have been in his conduct forming the subject of the second and third charges, at any rate very largely to extenuate the same. I have already expressed my opinion, that whether there was or was not insubordination, depends upon what comes within the scope of an aide-de-camp's military duties; if the orders given were such as an officer was bound to obey, no personal feelings of any description can be pleaded as an excuse. Therefore, should the Court wholly or in part accept the prisoner's view of the treatment he had received, it can only be of importance as matter of extenuation, which the Court would take into consideration in their deliberation as to a sentence.

With regard to the fourth charge, the evidence shows that the prisoner's sword was demanded by his superior officer, Colonel D. M. Stewart, and that it was not given up. The prisoner alleges that there is no law requiring an officer in arrest to give up his sword, and that he told Colonel Stewart that, if he would show by what law he demanded it, the sword should be given him.

I need scarcely remind the Court that, though an unlawful order may be disobeyed with impunity, every order disobeyed is so at the subordinate's own peril, and that military discipline admits of no hesitation or cavilling at orders. The Queen's Regulations direct that an officer in arrest shall not wear his sword, and this is the sole regulation on the subject that I am acquainted with. The general orders, as sent out to this country from the Horse Guards, contain no reference to the general court martial held in New Zealand alluded to in the defence.

The

The demand for the sword, then, depends upon custom; as to the propriety and obligation of this custom, you, gentlemen, will judge in the terms of your oath "according to the custom of war." 29 August 1866.

The fifth charge appears to require no comments, referring as it does to a question of discipline, for the handling of which the military experience possessed by this Court affords the surest qualification.

J. N. Young, Major, Judge Advocate.

By *Prisoner*.] I have found some old books among my papers which I did not know that I possessed; they have no connection whatever with any of the points in the case; but as I said I produced them all, I think it right to hand them in to the Court; they are books connected with the Bombay command.

The court is closed for deliberation.

FINDING.

The Court are of opinion that the prisoner, Captain Ernest Scott Jervis, of Her Majesty's 106th Regiment (Bombay Light Infantry), is not guilty of the first and second charges preferred against him, and do accordingly acquit him of the same, and that he is guilty of the third, fourth, and fifth charges preferred against him. Finding.

SENTENCE.

The Court sentence the prisoner, Captain Ernest Scott Jervis, of Her Majesty's 106th Regiment (Bombay Light Infantry), to be dismissed the service. Sentence.

(signed) *James Brind*, Brigadier General,
Royal Artillery, and President.

Simla, 29 August 1866. *J. N. Young*, Major, Judge Advocate.

The trial is closed at two o'clock in the afternoon, and the Court adjourns until further orders.

RECOMMENDATION TO MERCY.

The Court having awarded a sentence of dismissal, and marked their sense of the prisoner's military misconduct, do now beg to recommend him to mercy in consideration of the extenuating circumstances disclosed in the proceedings.

(signed) *James Brind*, Brigadier General,
Royal Artillery, and President.

Twenty-seventh Day.—Wednesday, 12th September 1866.

The Court re-assembles at the same place at half-past 12 o'clock in the afternoon; President, Members, and Judge Advocate are all present. 12 Sept. 1866.

Letter No. 158 A, dated 11th September 1866, from the Officiating Judge Advocate General to the Judge Advocate, with its annexure, is read, marked B. Q., and appended.

REVISED FINDING.

The Court having attentively reconsidered the whole of the evidence, and also the communication from the revising officer, do now respectfully adhere to their original finding. Revised finding.

(signed) *James Brind*, Brigadier General,
Royal Artillery, President.

J. N. Young, Lieutenant Colonel,
Judge Advocate.

Simla, 12 September 1866.

The Court adjourn at 15 minutes before three o'clock in the afternoon.

Confirmed,

W. R. Mansfield,
General Commanding in Chief
in India.

Head Quarters, Simla,
17 September 1866.

REMARKS by His Excellency the COMMANDER IN CHIEF.

Remarks by his Excellency the Commander in Chief.

1st CHARGE.—It is to be regretted that in accordance with precedent, and the advice of the Judge Advocate General of the Army, the Court did not find a special verdict, with regard to the facts admitted by the prisoner, and the intention denied by him.

Putting aside the question of form, it is now the duty of the Commander in Chief to say, that his Excellency is advised that the proof for the prosecution is complete in the several instances of the first charge, with the exception of variances as to certain items.

This was shown in the careful analysis of the evidence and the law regarding it, which was submitted to the Court on revision.

The Court in its discretion having nevertheless recorded an acquittal, his Excellency may express his personal gratification that the character of one he has long befriended, will have the advantage of this verdict in time to come.

His Excellency can only regret that serious military misconduct on the part of the prisoner should have deprived him, before the trial, of the benefit of the doubts on which the Court has apparently acted.

2nd CHARGE.—His Excellency is further advised that the verdict on the second charge is contrary to clear and sufficient proof. In this instance, the prisoner disobeyed orders which were reasonable, in accordance with the custom and regulation of the army, and without obedience to which he could not possibly clear his character of the most serious imputations. According to the principles of military discipline, and the dictates of the English judges, all officers and soldiers are bound to obey orders which are reasonable, and not contrary to the law of the land.

RECOMMENDATION TO MERCY.

The Commander in Chief might perhaps earn a cheap reputation for clemency and liberality by attending to this recommendation. His Excellency is compelled to show how such action on his part would amount to a betrayal of his duty.

The Court, if it considered the prisoner a fit and proper officer to retain the commission of a captain in Her Majesty's service, could have awarded punishment other than dismissal.

With respect to the alleged extenuating circumstances, as being the ground of the recommendation, his Excellency is under the necessity of showing to the Court that they have no existence.

If in so doing his Excellency's remarks appear to press hardly on the prisoner, the responsibility must rest on the recommendation, it being most painful to his Excellency in any manner to aggravate the situation of the prisoner.

The whole of the proceedings show that a strong *primâ facie* case of the conduct stated in the first charge was presented to the Court by the prosecution.

It was this case against the prisoner, of which he refused to clear himself according to his obligations as a military officer; in so doing he disobeyed orders on various occasions.

This disobedience was not the result of momentary passion; it was deliberate; it occurred at different times, and therefore it may be held to have been premeditated.

In short, the prisoner showed a resolute determination to set aside the orders of his military superiors, however those orders might be expressed, and however he might be warned of the illegality and danger of the course he was pursuing.

He finally committed himself to a threat that he would not attend the court martial assembled for his trial, unless compelled by physical force; measures having been rendered necessary to convey him under a guard to the Court if the threat should be executed.

Thus, giving the prisoner the full advantage of the acquittal on the first charge, the Court cannot escape from the dilemma of having recommended to mercy an officer who, by his insubordinate conduct, compelled the Commander in Chief to have recourse to a court martial, which might have been saved by obedience to orders on the part of the prisoner; the same prisoner having set an example of deliberate insubordination, which has already found its imitators in the ranks, even in the very details of the crime set out in the last charge of which the prisoner has been found guilty.

The Court should have asked itself if it ever happens that a private soldier, with his disadvantages of imperfect education, is allowed to plead extenuating circumstances, when he wilfully disobeys a military order, which has been more than once repeated.

Such an occurrence is simply unknown; the discipline and integrity of the army forbid the possibility of admitting such a plea; and the private soldier always receives the severest punishment for the offence which a court martial can award.

What, then, can be said of the disobedience of orders of the experienced commissioned officer, who has acted deliberately and of insubordination aforethought, and has thus set a fatal and far spreading example.

It is, his Excellency thinks, abundantly clear, that if he were to listen to this recommendation, it would be justly said in every barrack-room in India that there was one law for the officer and another for the soldier, in the vital point on due regard to which depends the entire military system of Her Majesty's forces, and with it safety to Her Majesty's arms and subjects.

To exercise mercy under such circumstances belongs sol ly to the prerogative of Her most gracious Majesty the Queen. Remarks by his Excellency the Commander in Chief.

PROCEDURE.

In the course of this long and unduly protracted trial, there was much requiring unfavourable comment in the matter of procedure.

The Commander in Chief trusts that the faults of procedure to which he alludes, involving great loss of time, the abuse of the right of cross-examination, and the making use of a court martial to propagate attacks on witnesses not in presence of the Court, will not be drawn into precedents hereafter.

This matter will be more particularly dealt with in detail by the Judge Advocate General of the Army, for the guidance of general officers and courts-martial.

(signed) *W. R. Mansfield*, General,
17 September 1866. Commander in Chief in India.

APPENDIX.

Appendix (A.)

MEMORANDUM for the Guidance of the Personal Staff.

THE military secretary will exercise the duties of commandant of head quarters. All applications for leave of absence, arbitration with regard to differences, and generally what comes under the head of discipline in the Commander in Chief's household, as affecting the gentlemen composing it, are to be referred to him. Appendix (A).

The military secretary will not in general interfere between the officer who has charge of the domestic arrangements and the servants or orderlies. But in case of complaints from the latter on account of striking or ill-treatment, the military secretary will have the goodness to examine into them, and to decide on them according to their merits, as is done by the head of the department in such matters.

1. There will be one aide-de-camp in waiting daily, who will always be dressed in uniform, and will remain on the premises till the Commander in Chief goes out in the afternoon.

2. One aide-de-camp, specially named by the Commander in Chief, will take charge of the household affairs.

3. One aide-de-camp, also to be named, will take charge of the table.

4. When Lady Mansfield is in India, any HINT which she may give with regard to matters connected with the establishment, leaving of cards, reception of visitors, &c. &c., is to be received as if it were an absolute order from the Commander in Chief.

5. The Commander in Chief, unless he may give a special direction, does not require personal attendance beyond the premises. When he may require such personal attendance on the part of an aide-de-camp, the latter is to be in uniform, with sword, &c., or as may be directed by the Commander in Chief. This is quite irrespective of the dress the Commander in Chief may wear himself.

6. Whenever Lady Mansfield may require the personal attendance of an aide-de-camp, the latter is to be in uniform.

7. On the line of march, the personal staff will all be in uniform, unless they leave the road for the purpose of walking, or for sport.

8. When travelling on railway, it is expedient that the personal staff should also be in uniform, because of its happening so often that the commanding and other officers of stations come to meet his Excellency on the occasion of his arrival or departure.

9. At large dinner or other parties, the presence of two aides-de-camp is expected as a rule; at evening parties and receptions, all must of course be present.

10. Otherwise it is only necessary that the aide-de-camp on duty should be present at dinner, though the Commander in Chief is always glad to see his aides-de-camp at table.

11. Whenever the Commander in Chief goes to a State dinner at the Governor General's, or to any other party, if an aide-de-camp is asked without being named, the aide-de-camp on duty will attend his Excellency. Should an aide-de-camp be named personally,

Appendix (A). personally, he will go instead of the aide-de-camp on duty. On the occasion of State balls at Government House, or elsewhere, it is expected that the whole of the personal staff will avail themselves of the invitation afforded them. They should time their arrival so as to enter the rooms of the host as the suite of his Excellency. At Simla the personal staff can follow the usual custom of the place with regard to plain clothes; but in all other stations they are expected generally to wear uniform. The dinner dress at the Commander in Chief's table is the military undress, except on full-dress occasions, of which due notice is given.

12. The Commander in Chief expects that his personal staff will not give in to the temptation of high play.

The post of an aide-de-camp is not a very easy one to fill well; the duties are, for the most part, light and of a social character; yet if they be not performed with care and exactness, discomfort and misunderstanding are sure to follow. An aide-de-camp is, at the same time, in the position of an officer obeying instructions and looking after the interests of his chief, and also of a guest. It is most desirable that the latter part of the character should never be forgotten for a moment; thus, whenever the master or mistress of the house enters a room, it is customary for the expectant guests and the sons of the family to rise, even though they may have sat down to dinner. This, and other forms of social ceremony, cannot be too carefully attended to in a military household.

The greatest courtesy must be practised by all members of the personal staff towards the guests of the Commander in Chief and Lady Mansfield; pique on the part of a member of the staff towards their guests cannot be permitted. When, unfortunately, feelings may prevail rendering this matter difficult, the Commander in Chief must ask his staff to recollect that what is here inculcated is an indispensable duty with regard to his position.

Subject to the rules of politeness which have been indicated, the Commander in Chief wishes the whole of his staff to be as much as possible on the footing of a well-ordered family.

(signed) *W. R. Mansfield*, General,
Commander in Chief in India.

Ambala, 30 March 1865.

Transmitted for the information and guidance of

Military Secretary.

Appendix (B.)

MEMORANDUM by the Commander in Chief.

Appendix (B). AFTER seeing the finding of the Court on the proceedings attributed to Captain Jervis, first in the direct charges which were preferred, and, secondly, in the still graver matter adduced on the 14th of May 1866, no choice is left to the Commander in Chief.

2. Captain Jervis has declined to afford any sufficient explanation with regard to the charges preferred in court, and he has offered no defence against the matter alleged by Major Gordon this day (14th May 1866).

3. Captain Jervis is, therefore, placed in arrest on the matter of the first charge; secondly, with respect to the alleged breach of trust, as conduct unworthy of an officer and gentleman; and, thirdly, for direct disobedience of military orders conveyed to him by the Adjutant General to bring the Commander in Chief's account books, papers, &c., to the court of inquiry which sat on the 14th day of May 1866.

4. His Excellency reserves to himself the right of preferring charges against Captain Jervis with regard to the criminality of this breach of trust, according to the sense of the criminal code, as his Excellency may be advised by the Judge Advocate General, while every opportunity will be afforded him of removing that character from the breach of trust if possible.

5. He now again receives the military order of his Excellency to surrender all books, papers, letters, bills, and receipts which purport to have regard to his Excellency's accounts.

6. He, being under arrest, will daily attend at the military secretary's office for the purpose of assisting the military secretary, Major Gordon, and an officer to be named by the Adjutant General from his department, in unravelling the accounts, and so make a real and honourable attempt to relieve himself (Captain Jervis) from the frightful imputations under which he now labours.

7. Every opportunity will thus be afforded him of righting himself if possible.

8. The

8. The three officers as above alluded to will thus sit as a committee, and will report for the information of the Commander in Chief as soon as possible. Appendix (B).

(signed) *W. R. Mansfield*, General,
Commander in Chief in India.

Head Quarters, Simla,
14 May 1866.

Adjutant General's Office, Head Quarters, Simla,
15 May 1866.

FORWARDED to Captain Jervis by order of his Excellency the Commander in Chief.

(By order.)

(signed) *H. E. Longden*, Colonel,
Adjutant General.

Captain Jervis,
Her Majesty's 106th Foot, Simla.

(True copy.)

(signed) *D. M. Stewart*, Colonel,
Deputy Adjutant General.

Appendix (C.)

(Confidential.)

Sir, Simla, 10 May 1866. Appendix (C).

IN reply to your letter just received, I must beg of you to assure the Commander in Chief that I am ready now, as at all times I shall be, most cheerfully to obey, and act up to the best of my power to any order given me by his Excellency.

As regards my attendance at the Court of Inquiry this morning, for the object laid down in your letter, I will, with his Excellency the Commander in Chief's permission, avail myself of the privilege which is, I believe, allowed me by the regulations of the service,* and not be present at the Court of Inquiry in the absence of my counsel.

* *Vide* Manual on Military Law, by Colonel Pipon, page 160.

I have, &c.
(signed) *Scott Jervis*, Captain,
106th Light Infantry.

Colonel Longden, C.B.,
Adjutant General of the Army in India.

Appendix (D.)

Adjutant General's Office, Head Quarters, Simla, Appendix (D).
10 May 1866.

Sir,

HAVING laid before the Commander in Chief your letter of the 10th May 1866, his Excellency desires me to advise you that you are pursuing a most dangerous course. His Excellency might at once have placed you in arrest for contumacious disobedience of military orders. The book from which you quote is merely a law manual, which may or may not be correct.

2. The edition of that book from which the passage in your letter is taken, clearly committed a great error when it laid down a position in which an officer on the full-pay of Her Majesty's service could decline to obey an order coming from duly constituted military authority.

3. That error has, however, been corrected in a subsequent edition of the book in question.

4. His Excellency considering that you have been misguided owing to ignorance of the first principles of military discipline, has permitted me, as a last chance to you, to annex an extract† from a late edition of the book in question, for the correction of the error under which you are labouring.

5. The

† Extract from Manual on Military Law by Colonel Pipon, edition of 1863, page 171:
"When the conduct of an officer or soldier is the subject of investigation, he may decline to take any part in the proceedings, to make any statement, or to examine any witnesses before the court; he has a right to be present, and it would be his duty to attend, if ordered do do so."

Appendix (D). 5. The Court has adjourned until one o'clock, p. m., this day. If you are not in attendance at the Court at that hour, you will be placed under arrest for disobedience of orders, and the Court will proceed with its investigation in your absence.

I have, &c.
(signed) *H. E. Longden*, Colonel,
Adjutant General.

Captain Jervis, Her Majesty's 106th Foot,
late Acting Deputy Commissioner
to the Commander in Chief.

Appendix (E.)

Appendix (E). My dear Flood,

I ATTENDED the Court of Inquiry this morning, as directed. The most awful statement, false, in fact, without a particle of truth, was read out by Gordon. I was made so unwell by the shock it gave me, that I was obliged to return home.

Pray assure Sir William that I am only desirous to afford the fullest explanation on every point, on which he wishes for it. Not a word that has been said against me is true, as I can prove.

For God's sake, however, let me entreat of him to spare my feelings; ask me questions, and I will explain all and everything there may be a doubt in his mind about. Depute Gordon, or one man to take over charge, and ask for any explanation, but do not, I beg and pray of his Excellency, insult me, when there is no occasion for it.

My counsel, in whose hands I placed the case the day I read the correspondence, under the impression his Excellency would not hear me, will arrive very shortly now, and everything can be gone into.

But in the meantime let me say that every accusation brought against me, that I have heard is untrue from beginning to end.

Very truly yours,
14—5—66. (signed) *Scott Jervis.*

Appendix (F.)

Appendix (F). Sir, Simla, 25 May 1866.

I HAVE the honour to acknowledge the receipt of your letter of 23rd instant.

I am greatly pained to find that his Excellency Sir William Mansfield views my conduct with such grave displeasure, but as I am entirely confident of my innocence of all the matters laid to my charge, save the single hasty breach of military discipline in absenting myself from the Court of Inquiry, I can only trust to the impartiality of the tribunal before which I may be arraigned for absolution and acquittal.

In the mean time, however, I take the liberty of submitting for his Excellency's indulgent consideration the following remarks:

As the case stands at present, a finding has I understand been recorded against me by the Court of Inquiry, which his Excellency convened on the 10th instant.

That court consisted of members of his Excellency Sir William Mansfield's staff, viz:

The Deputy Adjutant General.
The Deputy Quartermaster General.
The Deputy Judge Advocate General.
The Prosecutor being his Excellency's aide-de-camp.

The motive of this selection I am well aware, was that the proceedings should not be made public, a feeling of consideration on his Excellency's part for which I am sincerely grateful.

But I would now entreat his Excellency to consider whether the Court, on whose finding I am to be arraigned before a general court martial, can be regarded as an unbiassed, or impartial Court.

His Excellency Sir William Mansfield had already passed a strong opinion in regard to the truth of the charges made in my absence by the witness Abbey; his Excellency had placed his own interpretation on my letter to Major Flood, denying all culpability, and treated it as an admission of guilt. He had declared that "nothing more was to be done," and had summarily dismissed me from his staff, and thus without receiving any explanation, or holding any personal communication with me, had passed his own decision upon the whole matter.

Without for a moment venturing to impugn the motives either of his Excellency or the members of the Court, I would yet respectfully submit whether a Court so composed, and under such peculiar circumstances, in a matter in which his Excellency the Commander

mander in Chief was the real prosecutor, which related solely to Sir William Mansfield's private affairs, and on which his Excellency had already recorded judgment, can be regarded either according to legal principles, military regulation, or the general opinion of the public, as an impartial or unbiassed tribunal, whose finding would be sufficient to justify my arraignment before a general court martial. Appendix (F).

This question becomes the more important, because in consequence of the absence of my counsel, and the extremely critical position in which these proceedings had placed me, I had been compelled to decline taking any part in the proceedings.

I have now submitted an explanation of those proceedings regarding the farm, which have, I conceive, been so entirely misunderstood, and if after perusal of that explanation, and a consideration of the remarks now offered, his Excellency sees fit to grant me an impartial inquiry before an independent Court, previous to carrying out his present intentions, I shall be exceedingly grateful, and his Excellency will have the satisfaction of feeling that he has allowed me the privilege of public explanation and defence, and has availed himself of unquestionable means of ascertaining the truth, before adopting the last measures.

In the meantime, as I have never seen the proceedings or finding of the Court of Inquiry, I shall esteem it a favour if I may be supplied with a copy of them.

I have, &c.
(signed) *Scott Jervis*, Captain,
106th Light Infantry.

Colonel Longden, C.B.,
Adjutant General.

Appendix (G.)

Adjutant General's Office, Head Quarters, Simla, Appendix (G).
26 May 1866.

Sir,

I AM directed to acknowledge the receipt of your letter of the 25th May 1866, and to convey to you an expression of the Commander in Chief's regret that you should have added to the offences against discipline already committed by you, by now daring to call in question the impartiality, and therefore the honour of a Court of Inquiry, composed of officers of high rank on the general staff of the army.

2. I am to add that it is unusual to communicate the proceedings of Courts of Inquiry to the accused, such Courts being assembled to aid the decision of the superior officer who orders them to be convened.

3. An officer, when before such a Court, is at liberty to make his notes, or to cross-examine witnesses, which your contumacious conduct apparently prevented you from doing.

4. His Excellency sees no reason for departing from established precedent in this matter, the fullest opportunity of inquiry having been given you, of which you did not choose to avail yourself, either at the Court of Inquiry presided over by Colonel D. M. Stewart, Deputy Adjutant General, or at the Committee of Audit of Accounts.

5. The Commander in Chief apprehends that it would be as unusual as purposeless to consent to any further investigation not having the sanction of an oath, or in which you cannot be compelled to plead.

6. The social and domestic breach committed towards his Excellency, with regard to the alleged farm, which he has been disposed to look on as a very grave indiscretion, rendering the cessation of your connection with the personal staff of the Commander in Chief necessary, sinks into utter insignificance when compared with the terrible imputations, of which his Excellency had hoped so earnestly that you would free yourself with the help of the friendly Committee of Audit, and which you have deliberately declined to do.

7. His Excellency directs me again to remind you that you have not yet complied with his military order "to surrender all books, papers, letters, bills, and receipts, which purport to have regard to his Excellency's accounts," as conveyed in the memorandum by the Commander in Chief, dated the 14th May 1866, which was forwarded to you with my memorandum dated the 15th idem.

I have, &c.
(signed) *H. E. L.*

Captain Jervis,
Her Majesty's 106th Foot, Simla.

Appendix (H.)

Appendix (H).

Sir, Simla, 28 May 1866.

UNWILLING as I am to trespass on his Excellency Sir William Mansfield's time by any further correspondence, I yet consider it a sacred duty which I owe to myself, to submit with the greatest deference, some remarks on your letter of 26th instant.

And in the first place I would most earnestly disclaim all idea or intention of impugning the honour of the members of his Excellency's staff, who composed the Court of Inquiry. This intention I carefully disavowed in my former communication, and now beg emphatically to reiterate that disavowal.

In soliciting the formation of another Court of Inquiry, and in using the words "impartial" and "independent" I referred solely to the observations made by his Excellency himself, viz., that the Court had been composed of members of the staff, for the purpose of conducting a confidential inquiry, and preventing the matter transpiring beyond his Excellency's immediate circle.

From this I naturally concluded that had not *privacy* been the object, his Excellency would *not* have made such a selection, but have rather chosen officers who could come to the inquiry with minds and judgments altogether unbiassed by previous communication with his Excellency, or previous participation in the discussion. In this sense only did I use the words quoted, and in this sense only did I refer to the proceedings of the Court which had already been convened.

It is no disparagement to the most honourable man in the world, to suppose that he must be more or less biassed by having heard one side of a question, especially from the party whose avowed object is to support that side; it is but a necessity of human nature that the members of Sir William Mansfield's Staff should be more or less impressed by his Excellency's own views, when they had been recorded in the forcible terms in which his Excellency's minutes had been expressed.

In this sense, without the slightest reference to motive or intention, I submitted my request for a second inquiry, the members of which, now that the object of privacy no longer existed, might enter upon the preliminary investigation of the serious charges brought against me, with minds altogether free from any bias whatever, and undisturbed by previous impression or idea derived from extraneous circumstances.

I trust this explanation will relieve me in his Excellency's mind from the serious imputation of having impugned the honour of any one concerned.

With regard to your remarks that my contumacious conduct apparently prevented me from taking notes, or cross-examining the witnesses at the court, I would also respectfully deprecate this animadversion. It was not, I submit *contumacy*, but *simple prudence* that prevented my taking part in the proceedings, in the absence of my counsel; and even the military offence, which I now see with regret, that I did commit in leaving the court, was committed, as I have already explained, under a misunderstanding of the regulations, and at the same time under sudden feelings of honest indignation, which I found it at the moment impossible to control. For this act I have already submitted an humble and unreserved apology, and should have hoped that under these circumstances, such an act might have been condoned.

In the fifth paragraph of your letter you say "the Commander in Chief apprehends that it would be as unusual as purposeless to consent to any further investigation not having the sanction of an oath, and in which you cannot be compelled to plead."

If I may be allowed to offer a comment upon this, I would respectfully submit that neither of these objections touch the object for which I solicit further inquiry. The absence of an oath's sanction has not prevented an adverse finding; it cannot vitiate or interfere with a finding that is favourable, while in regard to the objection that I "cannot be compelled to plead," I would respectfully remind his Excellency, that it is for the express purpose of enabling me to plead, that I submit the request.

The sixth paragraph of your letter is in some respects a source of unfeigned satisfaction, inasmuch as the matter of the farm, which had previously been designated as a serious offence, and treated apparently as a misfeasance "fatal to my character," and of such magnitude as to call for a military Court of Inquiry, and to justify my ignominious dismissal from the staff, in consequence, I hope, of the explanation submitted, characterised by his Excellency Sir William Mansfield now as only a "social and domestic breach."

What the "terrible imputations" are to which his Excellency refers, I am unfortunately ignorant, but from the allusion made in the last portion of the paragraph, I conclude it has reference to accounts.

As, however, these accounts are avowedly imperfect, it is, I apprehend, impossible that any other ground can exist for these imputations, save vague suspicion only.

I am prepared to take a solemn affidavit to the effect that these and all other accounts kept by me are (errors excepted), entirely correct, and if my books and papers, now in the hands of the committee, are restored to me, I pledge myself to close and present them, when they can be subjected to any scrutiny which Sir William Mansfield may institute.

With regard to the delivery to the committee of the other books and papers in my possession, connected with these accounts, I regret I must notwithstanding his Excellency's commands decline to give them up.

I cannot

Appendix (H.)

I cannot bring myself to see or believe that such a delivery in the present crisis can form any part of my military duty, or that his Excellency Sir William Mansfield's order can be regarded in the eye of the law as a military order. Those papers are the only proof I possess of Sir William Mansfield's liability to me for a considerable sum of money, expended by me on his Excellency's account, and now due to me. They also form proof of the accuracy of my accounts, and the integrity of my dealings, and on this ground I claim a lien upon them; until I have done this, as, in the event of my being driven to sue for the balance due in a civil court, they are the only proof that I possess.

His Excellency Sir William Mansfield has been pleased to refer to the "Friendly Committee," which has been appointed to help me out of my difficulties, but I would respectfully remind his Excellency of the warning given to me that anything I said would by this very committee be noted down, and used as evidence against me.

I must be forgiven if I fail to recognise in such a committee, any element of friendliness, or if I object, so far as I legitimately may to the cruel indignity offered me by such a proposed ordeal.

I again repeat my offer to close and present the accounts, if allowed the means of doing so. I solemnly assert that my accounts in every department are correct, and am prepared to make an affidavit to that purport.

In conclusion, I humbly trust his Excellency will graciously reconsider the application for a further inquiry. An inquiry so conducted as to satisfy his Excellency himself, that the finding whatever it may be, has been entirely unbiassed, either by previous communication, imperfect impressions, or pre-occupied judgment.

I have, &c.

(signed) *Scott Jervis*,
Captain, 106th Light Infantry.

Colonel Longden, C. B.,
Adjutant-General.

Appendix (I.)

To Captain *Jervis*, Aide-de-Camp.

Appendix (I.)

My dear Jervis, Simla, 13th April 1866.

As it appears your notions and mine about the clothing of horses, and certain points of stable management, do not agree, I have this morning drawn up a few short rules which I wish to be observed in the matter concerned.

The horses have certainly come up in a very insufficient state of clothing. The same thing occurred when I left Bombay for Scinde in February 1865, and again when I undertook my march in the autumn. On each occasion I expressed annoyance, and ordered fresh clothing to be bought instantly. This must convince you, that you were under error the day before yesterday, when you asserted that the horses had never more than a single blanket. This may be your system, but it is certainly not mine, and I consider it to be fatal to horses in any climate in India.

When I used to look after these things more than I do now, my rule was to have a jhool of three thicknesses, viz., two blankets and a lining, besides a separate blanket. This was especially attended to in the Bombay Presidency to meet the contingency of land wind.

I do not know why watering bridles have been abolished in the stable. It is unsafe to trust horses to be led without bridles. The deficiency must at once be supplied.

I think perhaps it would be well for you to revolve, whether you do not undertake too much in wishing to have the stables in your hands, as well as the other things connected with the establishment. There is so much to do, and so many different details to attend to, that I have great doubts in my mind, whether it is fair to yourself to tax you with the stable in addition to everything else. This becomes the more apparent now that Her Ladyship has returned to India, owing to which the change from a bachelor establishment adds a good deal to the things to be attended to.

The point urged by you, about the necessity of having all the servants under one hand, is not of any consequence, as the stable people would come to be paid on any day named by yourself as a matter of routine, the officer in charge of the stables keeping a list by which any changes or casualties among the stable servants would be shown. The officer in charge would be responsible for petty expenses and the forage bills, and would receive the monthly amount from you on requisition, the said amount appearing in the gross in your books.

Perhaps it might even be well that the officer in charge should receive the stable wages in the gross, and pay the stable servants himself.

I recommend you to think over this, which I am sure you will understand is not meant in any way as a reflection on you. For, on the contrary, I am delighted to take this opportunity of acknowledging the care and zeal you bestow on the management of my affairs.

If on reflection you should be disposed to concur in the idea, that it may be well to give up the stables, I think I shall ask Gordon to take charge of them, who seems to have a great turn for horses.

Appendix (I.)

The division of labour would then be as follows:

The charge of the house to rest with you under Lady Mansfield, which includes all the new business of the estate, building, &c., &c., and the Mahasoo arrangements.

Harbord to have charge of the visiting books, and to be responsible for all invitations, parties, and so forth.

Gordon to take charge of the stables, and all the details connected with them.

In this way there will be a proper division of labour, which will enable you all to attend to the demands of society, and to your own amusements, without any one absolutely escaping a little work.

Yours sincerely,
(signed) *W. R. M.*

(True copy.)

(signed) *Fred. Flood*, Major.

Appendix (I. 2.)

Appendix (I. 2)

RULES for Stable Management.

1. THE first principle in stable management, is that every horse should be supplied with ample clothing to meet changes of temperature.

2. Therefore, in addition to the suit of English clothing, each horse should have three good blankets, the same being either separate or made up in jhools.

3. When a horse moves he should carry the whole of his clothing with him, both English and native.

4. Every horse must be provided with halter and watering bridle.

5. All exercising is to take place in bridles.

6. Weekly inspections of the kit of each horse should take place; no old blanket, &c., being made away with, till replaced under orders.

7. As far as possible, each horse should be provided with saddle and bridle, which should always move with the horse in question, in the same way as the clothing. In fact, on the march, the horse should carry his entire kit.

8. When put in a railway, the saddle, bridle and English clothing, may be made up in a bundle duly labelled and carried in the luggage van as luggage, till the end of the railway trip, after which the syce will recover it and carry it as aforesaid.

13—4—66. (signed) *W. R. M.*

Appendix (K.)

Appendix (K.)

My dear Sir William,

I WILL not trouble you with a long explanation regarding your note of to-day's date. Allow me, however, to say, what I pointed out before, that the horses were supplied in Calcutta with the same amount of warm clothing they have always had since I have had charge of your stable; on leaving for Sind in 1865, they likewise had the same amount as also when they left this last year for Meerut. I state the above as a matter of fact. Any addition you wish me to make in that respect as an allowance for change of climate, can of course be made at once.

Whilst I have time on my hands, it affords me very great pleasure to be of use to you, in looking after your establishment to the best of my ability. The post is no sinecure, if its duties are performed.

I am prepared to do my best in assisting in the management of servants, or in carrying out any work handed over to me to perform.

The separation of the charge of the stables, if my opinion is asked, is an arrangement which will most certainly not be satisfactory.

I had considered the stable a pattern, the horses all that could be wished for, as to condition, and am beyond measure sorry to learn that Lady Mansfield and yourself, are not satisfied with what has been done.

I do not know to what extent it is your intention to call upon Gordon to perform the duties of an aide-de-camp, but I would ask your permission to allow either Gordon or Harbord to take over the management of the entire establishment. I must beg of you to understand

understand that I am not making this proposal in any other spirit, than a desire to see everything done in a manner which will conduce in the utmost to your convenience, as also that of Lady Mansfield. Appendix (K.)

Yours very truly,

Woodville, 13—4—66. (signed) *Scott Jervis.*

Appendix (L.)

MEMORANDUM of Orders for Captain *Jervis,* by the Commander in Chief. Appendix (L.)

14 April 1866.

WHEN the Commander in Chief is at the pains, with much patience, to explain what he considers to be a mistake in the management of a part of the establishment, his Excellency does not expect to be met by one of his personal staff, in what is meant to be a flat contradiction on very obvious matters of fact.

His Excellency therefore regrets that Captain Jervis has thought fit to continue a discussion on the matter of what his Excellency had found fault with, when all that remained to be done was to act on the orders given for future guidance.

Captain Jervis has clearly misapprehended the point at issue.

The Commander in Chief has several times, three times within the last fifteen months, found fault with an injudicious arrangement by which the horses, when started on a journey, are sent without sufficient clothing to encounter dangerous changes of temperature when on the march. Three times the Commander in Chief has himself temporarily corrected the evil, as he has been already at the trouble of showing Captain Jervis.

In his Excellency's mind the mistake of management is so obvious, that he fails to comprehend how anyone can attempt to defend it, more especially one who has the amplest discretion afforded him for supplying the horses with proper necessaries.

It is this, however, which Captain Jervis has done, by an appeal to precedent which is out of place in the consideration of such matters, and, further, in his Excellency's opinion, proceeds from Captain Jervis' imagination, as forming part of his view of stable management.

If Captain Jervis distrusted the impression of his Excellency in this matter, it would have been better not to argue in any case, but it would at least have been prudent for him to have sought to correct his own recollection by a reference to Major Flood, who preceded Captain Jervis in the management of the Commander in Chief's establishment.

His Excellency does not understand that an aide-de-camp, more than any other staff officer, can propose to resign the performance of the duties marked out for him. He is on the personal staff for the purpose of performing such duties as are allotted to him. It is not expected that any place on the personal staff is to be a sinecure. The allotted functions are duties which cannot be taken up and laid down to suit the caprices of a particular officer. They are not accepted as matters of favour from the subordinate, which might be gathered to be Captain Jervis' opinion, from the 2nd para. of his letter of yesterday.

The Commander in Chief now desires that the duties of his establishment be distributed among the three aides-de-camp in the manner indicated in his Excellency's private note to Captain Jervis of yesterday.

Captain Jervis will therefore be good enough to hand over the stables to Major Gordon, as an entirely separate charge.

Major Gordon has been this day informed by his Excellency that the Commander in Chief wishes him to undertake this duty.

(signed) *W. R. Mansfield.*

(True copy.)

(signed) *Fred. Flood,* Major.

Appendix (M.)

(Private.)

My dear Sir William,

I HAVE read your memorandum written in reply to my answer to your note of yesterday; I am, apart from the subject of it, annoyed beyond measure to think that I should be the cause of your time being taken up in carrying on a correspondence with me, relative to any assistance I have endeavoured to give in the management of your establishment. My attempt to serve you in this manner has failed, and I never was more disappointed in my life than when I became aware of the fact. Appendix (M.)

Let me assure you that I never intended anything I have written as a contradiction of what may have been mentioned by yourself.

Appendix (M.)

Honestly, and once for all, I can only tell you that I have worked for you as, from experience, I know very few men would have done.

I do not reply in detail to your memorandum of to-day, or to your note of yesterday. Had you put me the question, I would have convinced you that even to the arrangement for extra clothing, regarding which the present correspondence commenced, everything had been arranged for when it would be required. But I say no more; you have no longer that confidence in me which I imagined existed, and without which I could never work.

As I long since had occasion to point out, it is of little consequence to you whether I continue in the position I have filled for several years, or whether you declare that you no longer require my services; to me it is ruin, as you are as well aware as I am myself.

I wish, and believe me, I say so with all sincerity, to give you every assistance, so far as in my small way is in my power. I am now, I am convinced, giving you annoyance; and sooner than believe that anything I did so engaged your attention, I would ask your leave to resign my appointment, if my doing so necessitated my breaking stones on the roadway.

I have, as you requested, handed over the stable to Gordon, and must ask you to tell me to whom I am to hand over the rest of the establishment. I am distressed, but not angry; I have my own ideas as to how the present difficulty originated, but on this point I am for ever silent.

With your permission, I will change places with Harbord, and look after the visiting book, &c.; but I entreat of you not to ask me to continue the management of the establishment, for I could *never* undertake it again. I do not think there is anything in this note to which you will object; it is candid, and I wish it to be so. But I assure you it is intended by me that it should convey to you a simple reply to your memorandum, with an assurance that it contains no more than I feel I am at least doing my duty in stating. Let me, if necessary, anticipate any objection you may perhaps take to it, by declaring that it is written in strict good faith. I would, on no account, give you annoyance.

I accept cheerfully any decision you arrive at regarding my request to be relieved of the charge of the establishment, which charge I am anxious to be relieved of in a manner giving you the least possible inconvenience. Let me beg the favour of your destroying this note, after reading it.

Very sincerely yours,
(signed) *Scott Jervis.*

Woodville, 14-4-66.

Appendix (N.)

Appendix (N.)

Sir, Simla, 15 April 1866.

I AM directed to forward to you, officially, the accompanying memorandum by the Commander in Chief, and to inform you that it is Sir William Mansfield's positive order that you do not again address his Excellency direct in this matter.

(signed) *Fred. Flood*, Major,
Military Secretary.

Captain Jervis, Aide-de-camp to
His Excellency the Commander in Chief.

(True copy.)

(signed) *Fred. Flood*, Major.

(Appendix N. 2).

Appendix (N. 2.)

(Memorandum.)

THE Commander in Chief having intimated to Captain Jervis, by formal orders, the duties his Excellency desires Captain Jervis to perform, is surprised at receiving a long letter, marked "Private," in which Captain Jervis desires again to be relieved of those duties, and asks to whom he is to transfer them, notwithstanding his Excellency's injunction to the contrary.

There is a great deal in this letter showing strange ignorance of his position on the part of Captain Jervis, which his Excellency regrets to observe.

When the Commander in Chief issues formal orders, he does not admit the right of any officer on the staff to address him confidentially or privately on the subject of the orders concerned, or to assume that those orders can be lightly set aside.

Captain Jervis must recollect that his condition is one of military service, so long as he occupies the post of aide-de-camp, and not one of voluntary assistance, as he seems to think.

Captain Jervis must not talk to his Excellency about having lost the Commander in Chief's

Appendix (N 2.)

Chief's confidence, &c. &c., as being a reason for his requesting to give up duties which have been allotted to him. When the confidence of the Commander in Chief in an officer is forfeited, it is his Excellency's habit to say so, and act on it. Captain Jervis must be aware of more than one instance of his Excellency's practice on such occasions, during his time of office in the Commander in Chief's house, which led to the immediate dismissal of one officer, and the relief from responsible charge in the case of another.

Captain Jervis has committed a serious impropriety in his last letter, in his insinuation that the Commander in Chief may have been influenced improperly against him.

There is not the slightest ground for such insinuation, either in fact or in the recent communication of the Commander in Chief.

The Commander in Chief must decline any further correspondence, or to reverse his orders in any manner.

Captain Jervis must know that when his Excellency gives orders, it is not without due reflection and regard to consistency; change of intention being under such circumstances almost an impossibility. His Excellency has not time for argument or correspondence, when he may order a change of practice, or intimate his disapproval of a mistake or irregularity.

With respect to the above, the Commander in Chief will not object to meet Captain Jervis on his old terms of familiarity, but it must be on the understanding that orders are accepted, acted on and performed, without cavil or correspondence, and that when an order may be disagreeable or annoying to Captain Jervis, he is to put aside his own feelings, the questions concerned being such as affect the Commander in Chief, and not the personal convenience or wishes of the officer charged with execution.

It is not the first time that the Commander in Chief has had to put Captain Jervis right on the very important matter of his position, and immediate attention to orders.

Captain Jervis will recollect that this occasion is the last on which his Excellency will exercise forbearance.

His Excellency is sorry to have to speak out in this manner, but he has been obliged to do so by the apparent determination of Captain Jervis not to comprehend his military position towards the Commander in Chief, on the necessity of immediate compliance with his Excellency's wishes, whether expressed in the kindest and most forbearing manner, or in the form of an order. Both these means have been used on the present occasion in vain.

It is always his Excellency's pleasure in his own establishment to veil the harshness of military command under the forms and courtesy of familiar intercourse, and it is painful to him to have to act otherwise, as compelled to on the present occasion.

15 April 1866. (signed) *W. R. Mansfield.*

(True copy.)
(signed) *Fred. Flood*, Major.

Appendix (O.)

Appendix (O.)

Sir, Simla, 16 April 1866.

I AM in receipt of your letter of yesterday's date, as also of a Memorandum you enclosed, of his Excellency the Commander in Chief's, directing me to understand that I am to continue in charge of Sir William Mansfield's establishment as a military duty.

You will oblige me by conveying to the Commander in Chief an assurance on my part, I very much regret that I should have caused his Excellency any annoyance with reference to my holding this charge, which I now view in a different light from that in which I looked upon it till very recently.

It was indeed far from any intention of mine that anything I may have written, should have been so interpreted as to be the cause of a result no less annoying to myself than I am informed that it has been to his Excellency Sir William Mansfield.

I have, &c.
(signed) *Scott Jervis*, Captain.

Major F. R. S. Flood,
Military Secretary to his Excellency
the Commander in Chief in India.

Appendix (P.)

Appendix (P).

My dear Jervis, 24 April 1866.

You will receive for perusal a Memorandum, witten by his Excellency this day, on the subject of aide-de-camp's duty.

It will hardly be necessary to tell you that this Memorandum has been prompted by what his Excellency considers to be certain failures by you on this point.

The Commander in Chief has requested me to say that he is quite tired of these constantly recurring little disagreeables, and that if you are not prepared in the fullest sense to accept your position of aide-de-camp, it will be better that you should leave his Excellency's staff on friendly terms.

Captain Jervis, Aide-de-Camp. (signed) *Fred. Flood.*

(True copy.)

(signed) *Fred. Flood*, Major,
Military Secretary.

Appendix (P. 2.)

Memorandum by his Excellency the Commander in Chief for communication to the Personal Staff.

Appendix (P. 2).

An omission took place on the part of the aide-de-camp on duty yesterday.

It is published that it is one of Lady Mansfield's days of personal reception.

Many visitors having accordingly come for the purpose of waiting on Lady Mansfield, it seems to have been forgotten by the aide-de-camp in waiting that it was part of his duty to usher in ladies or gentlemen who called, and to remain in the drawing-room while the visits lasted, performing his part in the entertainment of the visitors, and showing them out again.

This rule, of course, especially applies to the days, Mondays and Thursdays, which have been announced by Lady Mansfield as days of reception.

The servants should be instructed to take all cards to the aide-de-camp in waiting between eleven and two o'clock, who will take Lady Mansfield's instructions in the like manner as is done for the Commander in Chief. His Excellency also takes this opportunity of repeating the instruction he gave on a former occasion, that neither English nor native gentlemen wishing for interviews are ever to be refused on the responsibility of the aide-de-camp, and without reference to his Excellency.

The Commander in Chief has learnt with great pain that in the case of one of his Aides-de-Camp, the ordinary civility of calling upon families who are in the habit of visiting at his Excellency's house, has been omitted. To his astonishment, he has been informed that such strange want of attention has been displayed towards even the ladies of the officers on the head quarters staff of the army, and of the personal staff.

It is observed that, considering his Excellency's position, and the social duties of an Aide-de-Camp, this amounts to neither more nor less than persistent discourtesy, and must be a never ceasing cause of irritation to ladies visiting at the house.

His Excellency says, once for all, that he cannot permit such a state of things, now that it has come to his knowledge. No officer is fit to be an aide-de-camp if it does not suit him to call generally on all the visiting acquaintances of his Excellency and Lady Mansfield, and to be on such terms of familiar courtesy as to be able to take his part in the general conversation of the dinner-table and the drawing-room with the ease of one on visiting terms.

With regard to this point, and also to another about to be mentioned, the Commander in Chief desires that Captain Jervis's attention be drawn to the instructions for the personal staff issued by his Excellency a year ago.

His Excellency desires to signify his disapproval of the disappearance of an aide-de-camp from the drawing-room after dinner, before the departure of other guests.

This, however unintentional, is a rudeness to the guests, and disrespectful to the lady of the house, unless there is a special engagement which in the ordinary course of society should be mentioned to the latter.

What has been referred to is the habit of a mess-room, and not of a private gentleman's house, still less of one in which of necessity a certain formality and extra attention on the part of the official household is expected by the public.

His Excellency is sorry to have to remark on such points, but he insists on the most practical execution of his former instructions, in which he regrets to say he has been obliged to notice failure.

24 April 1866. (signed) *W. Rd. Mansfield.*

Forwarded

Forwarded for the information and guidance of Major Gordon, Persian interpreter and aide-de-camp, Captain Jervis, aide-de-camp, and Captain the Honourable W. Harbord, aide-de-camp, who are requested to have the goodness to affix their initials below, as having read his Excellency's memorandum. Appendix (P. 2.)

By Order,
(signed) *Fred. Flood*, Major,
Military Secretary.

24 April 1866.

(Seen)
(signed) *T. E. Gordon.*
Scott Jervis.
W. Harbord.

(True copy.)
(signed) *Fred. Flood*, Major,
Military Secretary.

Appendix (Q.)

Appendix (Q.)

My dear Flood,

I HAVE received your note of yesterday's date, with the Memorandum therein referred to.

Kindly express to his Excellency that I am anxious to use every endeavour to comply with his Excellency's wishes in every respect.

I am sorry that his Excellency should consider that I have failed in the performance of my duty as an aide-de-camp on his Excellency's personal staff.

Very truly yours,
(signed) *Scott Jervis.*

Woodville, 25 April 1866.

Appendix (R.)

Appendix (R.)

Sir, Simla, 22 May 1866.

As president of the committee ordered to assemble for the purpose of auditing the Commander in Chief's private accounts, I have the honour to forward copies of a correspondence which has taken place between myself and Captain Jervis this day, and from which you will perceive that the committee have failed in procuring the attendance of that officer.

The committee assembled at half-past eleven o'clock, a.m., and adjourned at three o'clock, p.m. As they are powerless in compelling the attendance of Captain Jervis, as ordered by his Excellency, and as they are unable to proceed with their duties without his presence, I beg to refer the matter to you.

I have, &c.,
(signed) *Fred. Flood*, Major,
Presidentof the Committee.

To the Adjutant General,
Head Quarters.

(True copy)
(signed) *Fred. Flood*, Major.

Appendix (S.)

Appendix (S.)

Sir, Simla, 15 May 1866.

As you are under arrest by order of the Commander in Chief for matters already communicated to you by the Adjutant General, and further as the audit of the accounts, the committee which has been ordered to assemble at my quarters at 12 o'clock to-morrow, is directed to undertake, assumes to a certain extent the form of an inquiry into your character, I am to warn you not to say anything which may be of prejudice to you hereafter, in case of his Excellency directing your trial by court martial, or other tribunal.

If, however, you should decline to give information on any points, a record will be made of the refusal; in short, whatever may be said or done before this committee, is liable to be used in evidence against you.

I have, &c.
(signed) *Fred. Flood*, Major,
Military Secretary.

To Captain Jervis.

(True copy.)
(signed) *Fred. Flood*, Major.

Appendix (T.)

Appendix (T.)

My dear Flood,

PLEASE ask Sir William to give me a memorandum of the cheques he has given me from 1st September last; I want to compare my account with it.

Kindly also give me a memorandum of the amounts you have sent me from 1st September last, on account of pay for the chuprassies, to compare also.

Very truly yours,
(signed) *Scott Jervis.*

P.S.—Perhaps you would also kindly mention that the house at Mahasoo, is now at Sir William's disposal; my things, with the exception of an empty case or two, which will be removed to-morrow, having, my servant tells me, been all taken away.

(signed) *Scott Jervis,* 15—5—'66.

Appendix (U.)

Appendix (U.)

My dear Jervis, 15 May 1866.

OVER-LEAF is a memorandum of the cheques you have received from Sir William. With regard to the amounts received from me for pay of chuprassies, I shall have to get that from the Quarter Master General's office, to which your receipts in original were sent.

(signed) *Fred. Flood.*

			Rs.	a.	p.
3 October	Cheque, No. 9, on	Simla Bank	2,000	–	–
13 October	Ditto	ditto	3,000	–	–
28 October	Ditto	ditto	600	–	–
20 December	Ditto	Oriental Bank	3,356	–	–
5 January 1866	Ditto	Simla Bank	500	–	–
15 January	Ditto	Oriental Bank	1,000	–	–
19 February	Ditto	ditto	2,000	–	–
21 March	Ditto	ditto	4,000	–	–
18 April	Ditto	ditto	2,000	–	–
		Rs.	18,456	–	–

(True copy.)
(signed) *Fred. Flood,* Major.

Appendix (V.)

Appendix (V.)

My dear Flood,

WOULD you kindly postpone the meeting this afternoon till three o'clock. The head accountant of the United Bank of India, who is making out Sir William's accounts, cannot get away earlier.

Very truly yours,
(signed) *Scott Jervis.* 16—5—'66.

Appendix (W.)

Appendix (W.)

My dear Jervis, 16 May 1866.

I DON'T quite understand from your note, whether you ask for a postponement of our meeting until three o'clock to-day, on account of your books, &c. not being ready, or because the head accountant of the United Bank of India cannot be present earlier.

If the former, I must acquiesce in the delay; but if the latter, I do not see that any postponement is necessary, as the presence before our committee of the individual alluded to is not required.

(signed) *Fred. Flood.*

Appendix (X.)

Appendix (X.)

My dear Flood,

VERY good, I will be there at three o'clock.

Very truly yours,
16—5—'66. (signed) *Scott Jervis.*

Appendix (Y.)

Appendix (Y.)

My dear Flood,

Please send me over the books, &c., as soon as possible.

Kindly ask Sir William to give me a cheque for the balance due to me on the building account.

Very truly yours,
(signed) *Scott Jervis.*
18—5—66.

Appendix (Z.)

Appendix (Z.)

My dear Jervis, 18 May 1866.

The books will not be sent to you; you will have access to them for the purpose of making up your accounts, but in the presence of my committee, which also has to determine whether the balance stated by you to be due from the Commander in Chief on the building account is correct.

The documents handed in by you as vouchers for your payments being, in the opinion of the committee, no vouchers at all, with a few exceptions, the work has been imposed on the committee of endeavouring to prove the payments, which you state in your account to have been made by you.

We shall probably have to examine you further with regard to this account.

(signed) *Fred. Flood.*

Appendix (A A.)

Appendix (A A.)

My dear Jervis, 18 May 1866.

It having come to the knowledge of the committee that there is a considerable number of documents connected with the building account which were handed over to you by Kedarnath Baboo, that you have not furnished us with, I, on the part of the committee, beg that you will send them to us without delay.

We hear of a Daily Book, detailed bills for material, with their receipts, &c. &c.

(signed) *Fred. Flood.*

Appendix (A B.)

Appendix (A B.)

My dear Flood,

The Daily Book you ask for should be with the clerk who takes the account every day.

Your note was not given me, by mistake, till eight o'clock last evening.

Yours, &c.
(signed) *Scott Jervis.*
19—5—66.

Appendix (A C.)

Appendix (A C.)

My dear Flood,

Please tell Sir William that I should feel obliged for a cheque for the balance due to me on the account I gave you a few days ago. If it is not convenient to Sir William to give a cheque for the entire amount, please ask his Excellency to let me have a cheque for 1,000 rupees (one thousand) this afternoon.

Yours, &c.
(signed) *Scott Jervis,*
19—5—66.

Appendix (A D.)

Appendix (A D.)

My dear Jervis, 19 May 1866.

I replied to you on this subject yesterday.

Your building accounts have not yet been passed.

(signed) *Fred. Flood.*

Appendix (A E.)

Appendix (A E.)

My dear Jervis, 21 May 1866.

On the part of the committee for auditing your accounts, I am to request you to have the goodness to come to my house this afternoon at three o'clock for the purpose of answering some questions regarding the building account, and to commence the examination of your general accounts.

(signed) *Fred. Flood.*

Appendix (A F.)

Appendix (A F.)

Dear Flood,

Pending the receipt of Sir William's reply to a letter addressed to his Excellency's Military Secretary by my counsel to-day, I would express my wish that you will be so good as to postpone the meeting of the committee, announced to me in your note, under reply, just received.

Yours, &c.
(signed) *Scott Jervis,*
21—5—66.

Appendix (A G.)

Appendix (A G.)

My dear Jervis, 21—5—66.

The committee had assembled, but in consideration of the wish expressed in your note just received, will not require your attendance until further notice.

(signed) *Fred. Flood.*

To Captain Jervis.

Appendix (A H.)

Appendix (A H.)

From *W. Tayler,* Esq. to Major *Flood,* Military Secretary to His Excellency Sir *William Mansfield.*

Sir,

Having been applied to by Captain Jervis to render him my professional assistance in the painful matters in which he is implicated, I take the liberty of asking whether, before any further action is taken in the case, his Excellency Sir William Mansfield would have any objections to allow me the honour of a personal interview with him, with a view to the discussion of one or two points, which it is possible, may not have suggested themselves to his Excellency or his advisers.

My principal reason for asking this is, because I apprehend, from sundry expressions used by his Excellency in the course of the correspondence, Sir William Mansfield himself regards the sudden disruption of relations with a young man who has so long been a member of his family, and enjoyed his confidence for so many years, with feelings of personal regret, if not of pain; and because it appears to me that explanations offered by a third party, not suffering, as Captain Jervis is, under feelings which, from their intensity, are calculated to interfere and have, in fact, interfered with, his better judgment, might be found sufficiently satisfactory as to remove many of the grounds on which his Excellency has found cause of such serious displeasure.

In offering this suggestion on behalf of Captain Jervis, who is suffering under the most agonising feelings which an officer and gentleman has perhaps ever experienced, I feel sure his Excellency will appreciate the earnest desire which actuates me to pave the way, if not for the restoration of Captain Jervis to the favour and confidence of his Excellency, at all events to the removal of those causes which have, in his Excellency's mind, created such grave suspicions against him.

Captain Jervis now perceives with regret that, in his anxious desire to avoid, during the necessary absence of his counsel, any admission or statement which might, in the critical position in which he had been placed, be held to be prejudicial to him, or become liable to misapprehension, he has given just cause for the damaging imputation that he wished to avoid all explanations whatever.

He is also fully conscious of the military offence which he unfortunately committed in absenting

absenting himself from the Court at which he had been ordered to attend; an offence for which he is ready and anxious to submit a full and sincere apology, in any form his Excellency may direct, and he is now prepared to submit a full explanation on every point in which his conduct has been called in question; and, at the same time, to answer any questions, and furnish any information that may be required of him.

With this view, I should be thankful if I could be favoured with a copy of the proceedings of the late Court of Inquiry.

In conclusion, I would wish to state that Captain Jervis would be much gratified if he might be allowed to make up the accounts called for from him at his own residence instead of in the presence of the committee, and for this purpose be permitted the use of the books necessary to enable him to do so.

The accounts all refer to his Excellency's private expenditure, and do not include any items of public disbursement, and Captain Jervis respectfully and earnestly submits for his Excellency's consideration, whether, in the absence of any *primâ facie* ground to presuppose inaccuracy, he may not be spared the humiliation which is implied by compelling him to prepare his own accounts under the surveillance of a military committee.

I have, &c.
(signed) *William Tayler.*

Kennedy House, 21 May 1866.

Appendix (A I.)

My dear Mr. Tayler, 21 May 1866. Appendix (A I.)

The Commander in Chief is at Mahasoo; the request contained in your letter just received, regarding Captain Jervis, shall be submitted to his Excellency at once.

(signed) *F. Flood.*

Appendix (A K.)

Sir, 21 May 1866.

In reply to your letter of this day's date, I am directed to say that the Commander in Chief will of course be very glad to receive your visit, and will be at home at his place at Mahasoo to-morrow. He begs, however, that you will understand that Captain Jervis is now under arrest for conduct affecting his character as an officer and a gentleman, for which he is liable to be tried; and further, that the Commander in Chief has reserved to himself the right of proceeding against him on criminal charges, if he is not satisfied with the result of the audit now being carried on by my committee.

I must inform you that that committee having been assembled under military orders for the purpose of enabling Captain Jervis to relieve himself of the imputations under which he labours, cannot be adjourned with regard to the terms under which Captain Jervis was placed in arrest. Further, any account prepared by that officer must be searchingly audited according to its vouchers before it can be accepted; consequently, as we wish, under the Commander in Chief's orders, to give Captain Jervis every possible assistance, it would save an infinity of time, and possibly great danger to himself, if he would come with all his books and vouchers, in compliance with the orders given by his Excellency, and then assist the committee to make up a sheet instead of preparing one alone, which, as aforesaid, must be questioned in every item.

Having said thus much, I am to inform you, on his Excellency's part, that your visit to him must be held to be one of a private character, from one gentleman to another, which cannot be made use of in any way, except with the entire consent of both parties. It must further be understood that you do not come as being delegated by Captain Jervis, it being quite impossible for his Excellency to receive any communication from that officer, except through the Courts, whatever they may be, which are ordered to inquire into his conduct. You will understand that this in no way expresses condemnation of Captain Jervis; but that it is a simple matter of business, that when an officer has behaved with great contumacy, amounting to disobedience of orders, and further stands accused of offences involving his character as an officer and a gentleman, he having been placed under arrest for the same, it would be contrary to military practice to receive messages from him, except through a military channel, as it would also be improper for the Commander in Chief in any manner to anticipate the award of a committee of inquiry or a court martial.

I have, &c.
(signed) *Fred. Flood*, Major,
Military Secretary.

W. Tayler, Esq.

Appendix (A L.)

Appendix (A L.)

Sir, Simla, 22 May 1866.

I HAVE the honour to acknowledge the receipt of your letter of yesterday's date.

I beg you will return my best thanks to his Excellency for his courteous reply to my suggestion regarding a personal interview; but under the restrictions laid down by his Excellency, I fear I should only be causing him unnecessary trouble by availing myself of the permission.

With regard to Captain Jervis's attendance at the committee, for the purpose of assisting in the auditing of Sir William Mansfield's private accounts, Captain Jervis, for the reasons stated at length in a memorandum which will be submitted in the course of to-morrow, does not feel himself justified, at all events till those reasons have been considered by his Excellency, in taking a step which would involve an admission (which he cannot conscientiously make), that the discharge of the duties allotted to him by his Excellency, in the management of his private household, forms any part of his military duty as an officer in Her Majesty's service, or in any way subjects him to liability in his military capacity, until at least some misfeasance is proved against him in a civil court.

Captain Jervis wishes to take this opportunity, however, of submitting a humble and sincere apology, for having, under feelings which it is difficult to describe, but with which he believes his Excellency will sympathise, committed a breach of military discipline, in absenting himself from the court of inquiry.

He throws himself in this matter on the indulgence of his Excellency, and humbly trusts that in consideration of the sudden shock which was occasioned by the dishonouring and unexpected charges brought against him, without previous notice, and he submits without any evidence whatever, this hasty act, which he now sincerely regrets, may be graciously condoned.

I am, &c.
(signed) *W. Tayler.*

Major F. R. S. Flood,
Military Secretary to His Excellency
Sir W. R. Mansfield, K.C.B., K.S.I.,
&c. &c. &c.

Appendix (A M.)

No. 1.

Appendix (A M.)

My dear Jervis, 22 May 1866.

THE Commander in Chief having directed that you are to furnish your accounts to my committee, forbids any further delay taking place.

I am therefore to request that you will have the goodness to come to my quarters this day at half-past eleven o'clock for that purpose.

(signed) *Fred. Flood.*

(True copy.)

(signed) *Fred. Flood*, Major,
President of the Committee.

Appendix (A N.)

No. 2.

Appendix (A N.)

Dear Flood,

ALL Sir William's private accounts I could prepare, I have given him. If his Excellency will give me the books I asked for, I shall be obliged to him, as I can complete the rest.

My counsel is in communication with Sir William, pending his Excellency's decision on this communication. I do not desire to attend your military committee for the purpose of laying before it Sir William Mansfield's private accounts.

Very truly yours,
Simla, 22 May 1866. (signed) *Scott Jervis.*

(True copy.)

(signed) *Fred. Flood*, Major,
President of the Committee.

Appendix (A O.)

No. 3.

My dear Jervis, 22 May 1866, noon.

THE committee of which I am President has, as you are aware, been ordered by the Commander in Chief for the purpose of auditing his private accounts. Therefore, the notice I sent to you this morning to attend, is carrying out his Excellency's orders. Appendix (A O.)

I may inform you that the Commander in Chief has distinctly declined seeing Mr. Tayler in the capacity of your counsel, it being impossible for an officer under arrest to communicate with his military superiors by such a channel.

Captain Jervis. (signed) *Fred. Flood,* Major.

(True copy.)

(signed) *Fred. Flood,* Major,
President of the Committee.

Appendix (A P.)

No. 4.

Dear Flood,

THE communication I refer to is by letter, and can of course be forwarded through whatever channel Sir William may direct. Under the restrictions laid down in your letter to Mr. Tayler, the interview so graciously granted by Sir William has been declined, under the impression that it would engage his Excellency's time to no purpose. Appendix (A P.)

Simla, 22 May 1866. (signed) *Scott Jervis.*

(True copy.)

(signed) *Fred. Flood,* Major,
President of the Committee.

Appendix (A Q.)

Dear Flood,

I AM sorry to be obliged to trouble Sir William with another application for a cheque for the balance of the building account due to me. I must request that you will explain to his Excellency that my expenses are very heavy for counsel in carrying on the unfortunate business about which we are corresponding at present. I cannot wait any longer for the money, and must ask you to explain to Sir William, that if not convenient to him to pay the whole amount, I desire to have a cheque for 1,000 rupees (one thousand), about the half. This sum I want to pay away at once. Appendix (A Q.)

Yours truly,

23 May 1866. (signed) *Scott Jervis.*

There is a balance due to me on the other account also.

Appendix (A R.)

Sir, 23 May 1866, noon.

I HAVE the honour to acknowledge the receipt of your private letter of this date, asking for money from the Commander in Chief, and to inform you that there is no reply to it but the one you have already on two occasions received. Appendix (A R.)

I take this opportunity of informing you that, on receipt of your second note yesterday, the committee, of which I am President, adjourned, and reported to the Adjutant General that you had failed to comply with the instructions I had conveyed to you to attend the committee, which was sitting by the Commander in Chief's order, for the purpose of auditing his Excellency's private accounts.

To Captain Jervis. (signed) *F. Flood.*

Appendix (A S.)

Memo.

Appendix (A S.)

The reasons which induce Captain Jervis (at least till the whole question is reconsidered by his Excellency) to decline attending the committee now sitting to audit Sir William's private accounts, necessarily embrace the whole circumstances of the case.

A brief precis of the facts is therefore herewith submitted.

The charges first brought against Captain Jervis, as contained in the Minute of his Excellency Sir William Mansfield, were based upon the evidence of a domestic servant. That evidence was taken in the absence, and without the knowledge of Captain Jervis, and contains in itself such remarkable inconsistencies, as in reality to prove nothing.

His Excellency's Minute of 1st May 1866, presented two alternatives; viz.:—

"If Captain Jervis admits the truth of the butler's allegations, there is nothing more to be done. If on the other hand, he does not admit the truth of them, he will appear before a court of inquiry, consisting of Major Flood and Major Gordon, and shake the evidence against him, as well as he can."

In a subsequent Minute, his Excellency records—

"Under these circumstances, his Excellency has no hesitation in saying that Captain Jervis must cease to be on his staff forthwith."

Now although Captain Jervis had not by any means admitted the facts stated by the witness Abbey, in the sense of acknowledging any culpability whatever on his own part, but had only admitted by implication bare facts which involved culpability or otherwise, according to the concomitant circumstances, and the sense in which they were interpreted, yet as his Excellency based his apparently final decision on this so-called admission, and acted upon it, by summarily dismissing Captain Jervis from his staff, Captain Jervis did not suppose, and could not suppose that he was entitled to, or could demand a court of inquiry, after such decision had been passed, especially as his Excellency had distinctly stated that "nothing more was to be done."

This is referred to, because the fact of Captain Jervis not having applied for the court of inquiry, has been considered as a fact damaging to his character.

A court of inquiry was, however, summoned some days after the Minute cited above, in which his Excellency had passed his final decision in the case.

At this inquiry, Captain Jervis attended; but declined, as he believed himself entitled to do, to say anything in the absence of his counsel, and submitted a request that the inquiry might be postponed for a few days, until his return.

Captain Jervis's reason for thus declining, was simply a matter of prudence, arising from the peculiar circumstances of the case.

His Excellency had refused in the first instance to see or hear him. He had been condemned unheard, on *ex parte* evidence of a single witness, his Excellency's personal servant. A letter, emphatically denying all culpability, had been interpreted by his Excellency as an admission of charges, which Captain Jervis in that very letter, in fact, indignantly repudiated. No opportunity of explanation had been afforded him, though it had been offered. He himself was, as he still is, under the conviction that the whole question was of a private character, not connected with his military duties or military liability; and he therefore felt that any incautious admission made by him, especially when labouring under the indignant feelings which his treatment had created, might be hereafter used to his prejudice.

On this account it was that he declined to speak, preferring to leave the inquiry to take its course, until he was advised whether his position on all the above points was a sound one.

He is now called upon to attend a military committee appointed by Sir William Mansfield to audit his Excellency's private accounts; and he is warned that anything he says during this operation, will be used hereafter against him.

These accounts are accounts of Sir William Mansfield's private expenditure. They have been kept by Captain Jervis at the cost of great labour and trouble, in the absence of a paid accountant. They exhibit a considerable balance due to Captain Jervis, and Captain Jervis is willing and anxious to close and present them, if the means are afforded him of so doing.

But he respectfully protests against the indignity and the cruelty of compelling him to perform this private duty in the presence and under the surveillance of a military committee, thereby admitting which he cannot conscientiously do, that the duty is a military duty, or that there is the slightest occasion for such surveillance, or the insult which it conveys.

Captain

Captain Jervis feels assured that his Excellency himself would view with approbation his wish to maintain, by legitimate means, his just rights as a gentleman and officer; and Captain Jervis therefore, respectfully solicits his Excellency's careful consideration of this statement, and hopes that his Excellency will not further insist upon his undergoing the painful ordeal, but allow him to prepare and present the accounts, as he has hitherto done.

An explanation in regard to the charges first brought against Captain Jervis, will be submitted in the course of to-morrow.

Any other matters that require explanation, will also be fully explained, on intimation being received of their character and purport.

23 May 1866. (signed) *Scott Jervis*, Captain.

Appendix (A T.)

Captain Christie, A.D.C., *Dr.*

To Accommodation for his Excellency the Commander in Chief, Self, and Captain the Hon. W. Harbord. Appendix (A T.)

1865.		*Rs.*	*a.*
25 March	To hire two rooms ordered by telegram, and secured	2	–
26 „	To 8 April, 14 days; board and lodging for his Excellency, at 6 rupees	84	–
26 „	To 6 April; for Captain Christie, A.D.C., 12 days, at 6 rupees	72	–
5 April	To 8 April; for Captain Harbord, A.D.C., 4 days, at 6 rupees	24	–
26 March	2 qts. beer, 2 rupees; 1 qt. sherry, 3 rupees	5	–
27 „	1 pt. beer, 10 *a.*; 3 clarets, light, 6 rupees	6	10
28 „	1 qt., 2 pts. beer, *Rs.* 2. 4.; 1 claret, 2 rupees; 1 sherry, 3 rupees	7	4
28 „	1 soda water, 4 annas	–	4
29 „	2 qts. beer, 2 rupees; 2 st. clarets, 4 rupees; 1 guest's hotel tiffin, *Rs.* 1. 8.	7	8
30 „	2 qts. beer, 2 rupees; 1 st. claret, 2 rupees	4	–
	Note.—Coolies, from 25th, to Capt. Flood and others	–	6
31 „	1 qt. beer, 1 rupee; 2 st. clarets, 4 rupees; 1 sherry, 3 rupees; 1 soda water, 4 annas	8	4
1 April	1 qt. 1 pt. beer, *R.* 1. 10.: 1 st. claret, 2 rupees; 1 spermaceti candle, 3 annas	3	13
2 „	1 qt. beer, 1 rupee; 1 st. claret, 2 rupees	3	–
3 „	1 qt. beer, 1 rupee; 1 st. claret, 2 rupees; 1 soda water, 4 annas	3	4
4 „	1 guest's dinner, 2 rupees	2	–
4 „	3 qts. beer, 3 rupees; 1 pt. ditto, 10 annas; 2 exs. clarets, 6 rupees; 1 sherry, 3 rupees	12	10
5 „	1 pt. beer, 10 annas; 1 sherry, 3 rupees; 1 st. claret, 2 rupees	5	10
5 „	1 guest's dinner, 2 rupees	2	–
5 „	Captain Harbord arrived; 1 qt. and pt. beer, *R.* 1. 10.	1	10
6 „	For 3; 3 qts. beer, 3 rupees; 1 st. claret, 2 rupees; 1 candle, sperm., 3 annas	5	3
7 „	For 2; 3 qts. beer, 3 rupees; 1 st. claret, 2 rupees; 1 sherry, 3 rupees; 2 candles, sperm, 6 annas	8	6
8 „	For 2; 2 guest's dinner, 4 rupees	4	–
8 „	„ 2; 4 qts. beer, 4 rupees; 1 pt. beer, 10 annas; 1 sherry, 3 rupees; 1 st. claret, 2 rupees	9	10
8 „	For 1; 1 sherry and claret opened, hotel charge, 8 annas	–	8
9 „	Half day's board and lodging (morning, tea, toast, breakfast, lodging) Umballa Hotel)	6	–
	TOTAL *Rs.*	288	14

Note.—Receipted across a stamp.

Appendix (A U.)

Appendix (A U.)

No. 14th October 1865.

To the

Simla Bank Corporation Limited.

Debit floating. Credit Captain Scott Jervis flg. Rs. 220 (s[d]) B. M.B. Simla. 25 Oct. '65.

Pay to self or bearer Co.'s Rupees Two hundred and twenty.

Co.'s Rupees 220. 0. 0.

(signed) *Walter Harbord.*

Appendix (A U. 2.)

Appendix (A U. 2.)

Captain Scott Jervis wishes the undermentioned cheques credited to his account, and encloses his bank book with the view to having the necessary entries made in it.

Cheque, dated the 14th October - - - -	*Rs.* 220 – –
Cheque, dated the 16th October - - - -	80 – –
Cheque, dated the 18th October - - - -	600 – –
	Rs. 900 – –

Simla, 24-10-'65.

(signed) *Scott Jervis.*

Appendix (A V.)

Appendix (A V.)

No. 16th October 1865.

To the

Simla Bank Corporation Limited.

Debit floating. Credit Captain Scott Jervis flg. Rs. 80 (s[d]) B. M.B. Simla. 25 Oct. '65.

Pay Captain Scott Jervis or bearer Co.'s Rupees Eighty.

Co's. Rupees 80. 0. 0.

(signed) *Walter Harbord.*

Appendix (A W.)

Sir, Calcutta, 9 March 1866.

Appendix (A W.)

In compliance with the request contained in your letter of the 2nd instant, we now have pleasure in enclosing our account in detail against his Excellency General Sir W. Mansfield, K.C.B., showing a sum of 1,147 rupees.

We are, &c.
(signed) *Jas. Monteith & Co.*

Major J. E. Gordon, A. D. C. to his Excellency the Commander in Chief, Simla.

Appendix (A. W. 2.)

His Excellency General Sir *W. Mansfield*, K.C.B. Appendix (A.W. 2.)

		Rs.	a.
1865.			
16 Dec.	To 1 pair stirrup leathers	5	–
16 „	1 dozen horse brushes, 5 rupees each	60	–
23 „	3 suits horse clothing, 55 rupees	165	–
27 „	1 dozen rope reins, *Rs.* 2. 8.	30	–
27 „	1 dozen stable collars, with shanks	84	–
28 „	1 plain driving whip	7	–
29 „	12 bottles harness blacking	18	–
29 „	2 sets harness brushes	10	–
1866.			
3 Jan.	1 pair pole chains	18	–
3 „	2 suits horse clothing, 55 rupees	110	–
4 „	12 horse blankets, 5 rupees	60	–
4 „	12 body robers, 6 rupees	72	–
10 „	1 pair gilt spurs	12	8
10 „	1 case for ditto	4	–
11 „	6 rope reins, *Rs.* 2. 8. each	15	–
12 „	3 suits horse clothing, 40 rupees each	120	–
12 „	New thong to buggy whip	1	8
13 „	1 stall collar, no charge	—	
17 „	3 pair knee-caps, 8 rupees	24	–
17 „	Repairing a pole chain	–	8
18 „	1 pair patent shoes	7	–
19 „	2 crest plates for cleaning crests	3	–
23 „	1 set carriage reins	24	–
24 „	6 chowries for syces, *Rs.* 3. 8.	21	–
2 Feb.	4 rope reins, *Rs.* 2. 8.	10	–
2 „	2 stall collars, 6 rupees	12	–
3 „	4 horse blankets, 5 rupees	20	–
3 „	2 body robers, 6 rupees	12	–
3 „	4 sets linen bandages, 7 rupees	28	–
5 „	4 sets woollen ditto, 8 rupees	32	–
6 „	New cloth to knee caps	1	8
16 „	1 stall collar, no charge	—	
20 „	2 pair satin rosettes and 2 brow bands	16	–
20 „	Repairing 3 rope reins and 1 body rober	2	–
24 „	Ditto - a rope rein	1	–
3 Mar.	New head to carriage bridle	1	8
7 „	Repairing a bagdoor	1	–
10 „	2 sets hobbles and heel ropes, 10 rupees	20	–
15 „	Repairing a collar	1	8
21 „	10 sets hobbles and heel ropes	100	–
21 „	1 bagdoor	2	8
23 „	1 pair side-saddle girths	7	–
24 „	Repairing 2 stall collars and 1 bagdoor	2	–
31 „	Packing harness, &c.	5	–
	Rs.	1,147	–

(signed) *Jas. M. & Co.*

Appendix (A. X.)

Sir, Calcutta, 24 May 1866.

Referring to your letter of the 14th instant, and in continuation of ours of the 19th *idem*, we now beg to enclose you a statement of the form of orders and vouchers received for the various articles supplied to his Excellency the Commander in Chief. Appendix (A. X.)

If absolutely necessary, and if he desired, we can forward the entire vouchers for your inspection.

We are, &c.
(signed) *Jas. Monteith & Co.*

Major T. E. Gordon,
A. D. C. to his Excellency the Commander in Chief,
Simla.

Appendix (A. X. 2.)

Appendix (A. X. 2.)

General Sir *W. Mansfield*, G. C. B. and K. S. I.

1865:			
16 December	To 1 pair stirrup leathers	-	A receipt in name of his Excellency, and signed by Captain Scott Jervis.
16 „	1 dozen horse brushes	-	
22 „	12 bottles harness blacking	-	Same as above.
22 „	2 sets harness brushes	-	
23 „	3 suits horse clothing	-	- Ditto.
27 „	1 dozen rope reins	- -	- Ditto.
27 „	1 „ stall collars, with shanks - - -		
28 „	1 plain driving whip	-	"Please send me per bearer a plain coachman's whip, strong, but not very heavy. Charge it to his Excellency the Commander in Chief's account. (signed) "*Scott Jervis*, Capt. "28 December." and A. D. C."
1866:			
3 January	1 pair pole chains	- -	A receipt in name of his Excellency, and signed by Captain Scott Jervis.
3 „	2 suits horse clothing, complete - - - -		
4 „	12 horse blankets	- -	An order on order book, by Captain Scott Jervis.
4 „	12 body rollers	- - -	
10 „	1 pair gilt spurs	- -	A receipt in name of his Excellency, and signed by Captain Scott Jervis.
10 „	1 case for ditto	- - -	
11 „	6 rope reins	- - -	- - The same as above.
12 „	3 suits horse clothing	-	- - Ditto - ditto.
12 „	New thong to buggy whip		
13 „	1 stable collar (no charge)	-	- - Ditto - ditto.
17 „	3 pairs knee caps	- -	
17 „	Repairing a pole chain	-	
18 „	1 pair P. L. shoes	- -	- - Ditto - ditto.
19 „	2 crest plates for cleaning crests - - -		- - Ditto - ditto.
23 „	1 set carriage reins	- -	- - Ditto - ditto.
24 „	6 chowries for syces	- -	- - Ditto - ditto.
2 February	4 rope reins	- - -	- - Ditto - ditto.
2 „	2 stall collars	- - -	
			"Please send me the following:—4 horse blankets, for night work, same as last, and 2 rollers for ditto. (signed) "*Scott Jervis*, Capt. "3—2—'66." and A. D. C."
3 „	4 horse blankets	- -	
3 „	2 body rollers	- - -	"I want the bandages I ordered yesterday at once, please. (signed) "*Scott Jervis*, Capt. "and A. D. C."
3 „	4 sets linen bandages	-	And a receipt in name of his Excellency, and signed by Captain Scott Jervis.
5 „	4 sets woollen bandages	-	A receipt in name of his Excellency, and signed by the above.
6 „	New cloth to knee cap	-	- - Ditto - ditto.
			*A receipt in name of his Excellency and signed by the above.
20 „	*2 pair satin rosettes, and *2 brow-bands; and repairing 3 rope reins and 1 body roller - -		"Be good enough to repair and return the accompanying bagdoors. (signed) "*Scott Jervis*, Capt. and A. D. C." "Be good enough to repair the accompanying roller. (signed) "*Scott Jervis*, Capt. and A. D. C."
24 „	Repairing a rope rein	-	"Be good enough to repair the accompanying bagdoor. (signed) "*Scott Jervis*, Capt. "23—2." and A. D. C."
3 March	New head to carriage bridle		"Be good enough to repair the accompanying portion of harness, and return it by bearer. (signed) "*Scott Jervis*, Capt."
7 „	Repairing a bagdoor	-	"Be good enough to repair the accompanying bagdoor."
10 „	2 sets hobbles and heel ropes		"Be good enough to make up, and let me have at once, 12 sets heel ropes. Let me have 2 sets this evening, if you can. I want them for horses going by rail to Delhi to-morrow. (signed) "*Scott Jervis*."

Appendix (A. X. 2.)—General *W. Mansfield*, G.C.B., K.S.I.—*continued.*

1866: 15 March -	Repairing a collar - -	"Be good enough to repair the accompanying collar. (signed) "*Scott Jervis.*"
21 „ -	*10 sets hobbles and heel ropes, and 1 bagdoor -	*Receipt of 10th answers this. "Received 1 leading rein, for his Excellency, (signed) "*E. Abbey.*"
23 „ -	1 pair side saddle girths -	A receipt in name of his Excellency, and signed by E. Abbey.
24 „ -	Repairing 2 stall collars and bagdoor - - -	"Be good enough to repair the accompanying. (signed) "*Scott Jervis*, Capt. "23—3—'66." and A.D.C."
31 „ -	Packing harness, &c. -	"A box to pack a quantity of harness, &c.; boxes are ready on the spot. (signed) "*Scott Jervis.*"

(True copy.)

(signed) *Jas. Monteith & Co.*

Appendix (A. Y.)

Appendix (A. Y.)

Sir, Calcutta, 18 June 1866.

We beg to acquaint you that we duly received your two telegrams, and that the first would have been replied to on date of receipt (yesterday), but that the telegraphic people refused to receive messages after eight o'clock a. m.

Your second telegram,* so soon as received, has been replied to.

We are, &c.
(signed) *Jas. Monteith & Co.*

Major F. R. S. Flood, Military Secretary
to his Excellency the Commander in Chief, Simla.

* *P.S.*—Therefore, we were precluded from replying earlier, although we explained to them the urgency of this case.

Appendix (A. Z.)

Appendix (A. Z.)

Government Telegraph Department. Office Monthly No.———

Received the ——— of ——— 186—, at ——— hours. Words charged ——— Cost, *Rs.* — *a.* —.

From Calcutta (C. J. J. G.) to Simla.

From Monteith & Co. to the Military Secretary of Commander in Chief.

Words:

"Private.

"Yes; Captain Jervis, A. D. C., has an account with us for goods supplied him last cold season, in his own name. We attempted to reply yesterday morning, but was told telegraph office was closed, being Sunday.

"18—7—'54."

Senders' Signature ——— Senders' Address ———

Received by ———, at ——— hours ——— mins. From ———

Forwarded by ———, at ——— hours ——— mins. To ———

Station from ———, date ———. Station to ———, date ———

Simla Telegragh Office. Peon Book No. ———.

(signed) *E. C. Yateman,*
19—6—'66. Assistant Superintendent in Charge.

Appendix (B. A.)

Appendix (B. A.)

Sir, The Exchange, Calcutta, 11 June 1866.

As requested in your letter of the 5th instant, we have now the pleasure to wait on you with a copy of our account with his Excellency the Commander in Chief, including the bill for goods purchased by Captain Jervis, which on examination, we hope you will find correct, and soliciting a remittance of *Rs.* 1,350. 12.

We remain, &c.
(signed) *Mackenzie, Lyall & Co.*

Major S. E. Gordon,
Aide-de-Camp to his Excellency the Commander in Chief,
Simla.

Appendix (B. A. 1.)

Appendix (B. A. 1.)

Sir W. Mansfield. *Dr.*

To Mackenzie, Lyall & Co.

		Rs.	*a.*	*p.*
	To Bill, No. 7021, dated 16 December 1865	65	–	–
	„ No. 8079, dated 17 January 1866	405	2	–
	„ No. 10,313, dated 12 November „	48	8	–
1866:	Bought by Captain S. Jervis:	*Rs.*	*a.*	*p.*
February 20	2 mahogany Almorah - - - *Rs.* 145	290	–	–
	1 „ dressing table - - - - -	130	–	–
	1 „ invalid couch - - - - -	80	–	–
	1 „ washhand stand - - - -	54	–	–
	1 „ towel rack - - - - -	9	–	–
	1 cheval glass - - - - - -	180	–	–
	1 pair mahogany dressing trays - - *Rs.* 36	72	–	–
	1 mahogany wall bookshelf - - - -	17	–	–
		832	–	–
	No. 9582:			
	Postage - - - - - - - - - -	–	1	–
	Postage to Simla - - - - - - - - -	–	1	–
	Due to us - - - - - - - *Rs.*	1,350	12	–

E. E., Calcutta, 31 May 1866. (signed) *M. L. & Co.*

Appendix (B. A. 2.)

Appendix (B. A. 2.)

Sir, The Exchange, Calcutta, 26 June 1866.

As requested in your letter of the 20th instant, we have the pleasure to wait on you with a detailed statement of our account against his Excellency Sir William Mansfield; and, if found in order, a remittance of *Rs.* 1,350. 13. at your earliest convenience will much oblige,

Yours, &c.
(signed) *Mackenzie, Lyall & Co.*

Major S. E. Gordon, Simla.

Sir W. Mansfield. *Dr.*

To Mackenzie, Lyall & Co.

		Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
1865:							
December 16	To 5 pairs lace curtains	13	–	–	65	–	–
1866:	No. 7021:						
January 17	1 cabinet	200	–	–			
	1 pair flower vases	75	–	–			
	1 toilet bottle	8	–	–			
	1 pair bronze vases	24	–	–			
	1 pair - ditto	50	–	–			
	1 pair porcelain vases	10	–	–			
	1 pair - ditto	6	–	–			
	1 fancy box	2	–	–			
	1 round table, coolie hire	30	–	–			
					495	2	–
	No. 8079:						
March 12	1 nursery lamp	6	8	–			
	1 toy sheep	2	–	–			
	1 air cushion	4	12	–			
	2 - ditto *Rs.* 10	20	–	–			
	Coolie hire	–	2	–			
	1 foot tub	15	–	–			
	Coolie hire	–	2	–			
					48	8	–
	No. 10313:						
	Bought by Captain S. Jervis:						
February 20	2 mahogany almirah *Rs.* 145	290	–	–			
	1 dozen dressing table	130	–	–			
	1 mahogany invalid couch	80	–	–			
	1 „ washhand stand	54	–	–			
	1 „ towel racks	9	–	–			
	1 cheval glass	180	–	–			
	1 pair mahogany dressing trays	72	–	–			
	1 mahogany wall bookshelf	17	–	–			
					832	–	–
	No. 19582:						
	Postages	–	–		–	2	–
	Postage to Simla	–	–		–	1	–
	Due to us	–	–	*Rs.*	1,350	13	–

E. E., Calcutta, 31 May 1866. (signed) *M. L. C.*

Appendix (B. B.)

MEMORANDUM of Captain Jervis's Account, from 1st to 31st March 1866.

Date.	Receipts.	Amount.	Date.	Expenditure.	Amount.		
			1866:		*Rs.*	*a.*	*p.*
	Nil.			Postage from the 1st to 31st	2	7	9
				Cash in notes	60	–	–
				Servants' wages for February 1866	55	–	–
				18 yards of American sheeting	16	11	–
			27 March	Telegraph message to Calcutta	5	–	–
				TOTAL *Rs.*	139	2	9
			25 „	3 horses crossing to Howra	3	–	–
				TOTAL *Rs.*	142	2	9

Appendix (B. C 2.)

PETTY CASH Account, from the 1st to 31st March 1866.

Date.	Receipts.	Amount.	Date.	Expenditure.	Amount.
1866:		*Rs. a. p.*	1866:		*Rs. a. p.*
4 March -	Cash - - - - - -	36 – –		Balance due from February - -	20 15 6
5 „ -	From cook - - - - -	95 14 –		Sundries - - - - - -	315 13 11
8 „ -	Cash - - - - - -	300 – –		Servants for February - - -	517 9 –
12 „ -	Ditto - - - - - -	300 – –		Stable account - - - - -	38 10 –
12 „ -	Major Lamb - - - - -	3 – –	11 March -	Advance to horse syce for horses' keep - - - - - -	40 – –
14 „ -	Cash - - - - - -	300 – –	11 „ -	Paid servants' fines - - -	8 – –
16 „ -	Ditto - - - - - -	300 – –	14 „ -	Dr. Ross, cash - - - -	300 – –
17 „ -	Ditto - - - - - -	300 – –	14 „ -	To manager of ice-house - -	40 – –
21 „ -	Ditto - - - - - -	300 – –	14 „ -	Hussain Khan's wages for January	20 – –
24 „ -	Ditto - - - - - -	200 – –	14 „ -	Bazaar expenses, from 6th to 31st March - - - - - -	504 12 2
24 „ -	For old cooking pots - - -	43 4 –	21 „ -	Advanced to syce for horses' keep -	50 – –
			22 „ -	Paid to Cheddy, Barrackpore, horses - - - - - -	14 – –
			27 „ -	Advanced to Sultan, blacksmith, for horses' feed - - - -	3 – –
			29 „ -	Mrs. Beans, for horse and coolie hire - - - - - -	75 4 6
			31 „ -	Advanced to chokeydar for sheep -	20 – –
				Total Expenditure - - -	1,958 1 1
				Balance in hand - - - -	220 – 11
	TOTAL - - - *Rs.*	2,178 2 –		TOTAL - - - *Rs.*	2,178 2 –

Appendix (B. D.)

Adjutant General's Office, Head Quarters, Simla,
18 July 1866.

Sir,

Appendix (B. D.) I HAVE had the honour to receive and submit to the Commander in Chief your letter of this date, and am directed by his Excellency to remark, that in his opinion no exceptional course should be taken with regard to the proceedings of the Court of Inquiry, before which Captain Jervis, Her Majesty's 106th Foot, appeared in the month of May last, which might be construed into a precedent hereafter, a change of procedure being involved entailing serious consequences.

2. It may be said that the essential quality of courts of inquiry on questions affecting the character of officers is their absolutely confidential nature.

3. It has been the military practice not to absolve the proceedings of such courts from the condition of confidence, except in the case of charges preferred against any military person on account of evidence given before a court of inquiry by himself, or in the case of statements by others whose evidence it is desired to impeach.

4. There being no such ground stated for violating the confidential condition of the proceedings of the Court of Inquiry in question, his Excellency declines to give his sanction to the production of the papers asked for.

I have, &c.
(signed) *H. E. Longden*, Colonel,
Adjutant General.

Brigadier General J. Brind, C.B.,
Bengal Artillery,
President of General Court Martial on
Captain Jervis, H.M.'s. 106th Foot.

Appendix (B. E.)

Sir, Simla, 19 June 1866.

I HAVE the honour to acknowledge the receipt of your letter of 15th instant, informing me that a general court martial has been ordered to try me on the charges therein specified, and directing me to send in a list of witnesses whom I may propose to call. Appendix (B. E.)

I now have the honour to inform you in reply, that the principal witnesses whom it will be indispensable for me to examine, are—

Colonel Kirby, 94th Foot, late Military Secretary to Sir William Mansfield.
Lieut. Colonel Evans, late Persian Interpreter to Sir William Mansfield.
Colonel Hope Crealock, unattached, late Assistant Adjutant General to Sir William Mansfield.
Captain Crealock, 95th Foot, late A. D. C. to Sir William Mansfield.
Captain Christie, Bombay Army, late A. D. C. to Sir William Mansfield.
Captain Murray, late A. D. C. to Sir William Mansfield.
Sir A. Stirling, K. C. B., late Military Secretary to the late Lord Clyde.
Brevet Major O. T. Burne, 20th Foot, A. D. C. to Sir Hugh Rose.
Shreecrishna Bassadev, Clerk, Commander in Chief's office, Bombay.
Almaram Bassoojee, Clerk, Commander in Chief's office, Bombay.
Eduljee Dorabjee, Parsee Butler of Bombay.
Jamsetjee ——, Parsee coachman of Bombay.

As some of these witnesses are in Europe and others in Bombay, there must necessarily be a considerable delay before they can attend.

It is my intention, during the interval, to submit a formal protest against his Excellency Sir William Mansfield's proceedings to his Royal Highness the Duke of Cambridge, Commanding in Chief, and to Lord Hartington, on the ground that his Excellency Sir William Mansfield is exceeding his powers by convening a general court martial on matters purely personal, and in which his own pecuniary interests, and nothing further, are involved.

Should this protest not lead to a prohibition of the court martial altogether, I should be able to establish, by the evidence of the witnesses named above, that the accounts of Sir William Mansfield's private expenditure have for years been kept on a system which renders it impossible for any charges to be brought against me on unclosed accounts or imperfect memoranda, as has now been done, and secondly, that his Excellency Sir William Mansfield himself has been for several years past guilty of the very act which his Excellency has imputed to me as my gravest offence; and which his Excellency, even in the letter under acknowledgment, declares to be an offence for which I deserve "dismissal from the service," viz., the disposing of private property, viz., joints of mutton, beer in pints and quarts, &c., to private individuals, and receiving payment for the same.

It is difficult for me to say, at the present moment, what other witnesses may be necessary, but I would wish to reserve to myself the option of calling others on subsidiary points hereafter.

I have, &c.
(signed) *Scott Jervis*, Captain.

To Colonel Longden, C. B.,
&c. &c.

Appendix (B. F.)

Adjutant General's Office, Head Quarters, Simla,
21 June 1866.

Sir,

THE Commander in Chief is advised, that the summoning of the witnesses mentioned in your letter dated the 19th instant, can only be intended for the defeat of justice in your own favour. Appendix (B. F.)

You are charged with scandalous conduct within certain dates, viz., from September 1865 to April 1866, and for disobedience of orders in various instances during the months of May and June 1866. It is evident, from the nature of things, that none of the witnesses named in your letter can speak to occurrences on those dates, with the exception, perhaps, of Captain Christie.

2. That officer's attendance, however, cannot, with reference to para. 38, section XXI., Bengal Military Regulations, and the invariable ruling in such a case as this, be ordered, unless you are prepared to pay his expenses beforehand.

3. It will, however, be competent for the court martial to determine whether Captain Christie's evidence is necessary or material as regards the charges brought against you.

4. I am further permitted to inform you, that no means exist for the legal summons of any witnesses out of Bengal for the purpose of giving evidence before a court martial.

I have, &c.
(signed) *H. E. Longden*, Colonel, Adjutant General.

(True copy.)
(signed) *D. M. Stewart*, Colonel,
Deputy Adjutant General.

Appendix (B. G.)

Appendix (B. G.)

Sir, Simla, 22 June 1866.

I HAVE the honour to acknowledge the receipt of your letter of yesterday, informing me that the court martial before which his Excellency the Commander in Chief wishes to arraign me will assemble on Monday next at the Assembly Rooms, without summoning my witnesses, who his Excellency says have been named by me for the purpose of defeating justice.

In reply, I have the honour most solemnly and emphatically to protest against this proceeding, as unwarranted by law, principle, or justice; and to state, with every respect to his Excellency, that nothing short of physical force will induce me to be present at the court, and that if dragged there as a prisoner, by violent means, I shall take no part in the proceedings save to reiterate before the court my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility he incurs by consenting to take part in the proceedings.

I must take this opportunity of reminding his Excellency Sir W. Mansfield, that he is in this case a private as well as a public prosecutor; that in prosecuting me for imaginary injuries to himself in connection with his wine, stores, and horse-cloths, he is directly seeking his own pecuniary interests, and that it is a thing altogether unheard of that a plaintiff should take upon himself to hurry on a trial in which his own personal and private interests are concerned, and assume to himself the power of pronouncing upon the necessity of summoning the witnesses whom the defendant considers necessary to establish his innocence.

I take the same opportunity of again declaring that I consider the witnesses named essential to my defence; that I shall be able to show by their evidence that the accounts of Sir William Mansfield's household expenditure have been kept on a system which renders it absolutely impossible that, till my accounts are closed, any charge can be preferred against me with the slightest show of reason, either as regards supposed deficiency of stores, or misappropriation, as it is only when these accounts are closed that articles taken, lent or used, have ever been accounted for, or their value recovered from the parties who have had them.

To deprive me of the means of obtaining this evidence, and to force me before the court without it, is simply to crush me, not by legal trial, but by tyranny.

And there, I think it also right to state, unreservedly, that I regard the whole of the military action which has been taken against me in this matter, including my arrest, as *ab initio* illegal.

In conclusion, and to prevent all possibility of misunderstanding, I would observe, that it is from no desire to evade inquiry that I now refuse to attend the court martial, except upon compulsion.

I have already lodged a suit for 2,500 rupees due to me on the general account, and summoned Sir William Mansfield to produce all the papers that are in his possession; and, directly they are available, it is my purpose to have the whole account drawn out by a professional accountant, and published to the world.

I have, &c.
(signed) *Scott Jervis*, Captain,
106th Light Infantry.

To Colonel Longden, C. B.,
Adjutant General.

Appendix (B. H.)

Adjutant General's Office, Head Quarters, Simla,
Sir, 24 June 1866.

Appendix (B. H.)

I HAVE it in command to forward to you the enclosed additional charge which will be brought against you at the general court martial before which you have been ordered to be arraigned.

2. I am further directed to transmit, for your information, an extract of a letter from the Judge Advocate General to my address, dated the 23rd June 1866.

Extract.

" Captain Jervis may possibly have misunderstood the Adjutant General's letter to which he replied, and he is apparently under an erroneous impression that his Excellency has finally decided as to his witnesses. It will be as well, therefore, I think, to explain to Captain Jervis now, that in the case of distant witnesses, whose summons is not obviously essential, it is for the court, and not for the prisoner himself, or any other individual, to decide authoritatively as to their materiality; that he has named witnesses who, apart from their inaccessibility, are certainly *primâ facie* not essential to his case; that therefore the assembly of the court cannot be deferred on their account; that however material or accessible witnesses may be, they cannot be required before a defence commences; and that when his trial reaches that stage, he can make any statement he chooses regarding

regarding his witnesses to the court, whereupon the court, on due reason shown, will decide whether they are or are not material and necessary; and will shape its own procedure accordingly, giving him the full benefit, in all probability, of any doubt which may arise owing to the absence of any unattainable evidence."

I have, &c.

Captain Jervis,
H. M's. 106th Foot, Simla.

(signed) *H. E. Longden*, Colonel,
Adjutant General.

(True copy.)
(signed) *D. M. Stewart*, Colonel,
Deputy Adjutant General.

Appendix (B J.)

Adjutant General's Office, Head Quarters, Simla,
23 June 1866.

Sir,

In answer to your letter, dated Simla, 22nd June 1866, I am to inform you that you are placed in close arrest, and cannot leave your domicile without special permission. Appendix (B J.)

An officer will attend on Monday morning next, at half past 10 o'clock, to conduct you to the court martial. Should you refuse to obey the command thus now communicated to you to appear before the court martial, a guard will be sent to enforce the order for your attendance.

Captain Jervis,
H. M's. 106th Foot, Simla.

(signed) *H. E. L.*

Appendix (B K.)

General Orders by His Excellency the Commander in Chief.

Head Quarters, Simla, 14 May 1866.

The Confidential Court of Inquiry of which Colonel D. M. Stewart, Deputy Adjutant General, is President, is directed to re-assemble to-day at noon, to record further evidence in the case. Appendix (B K.)

(By Order.)
(signed) *H. E. Longden*, Colonel,
Adjutant General.

Appendix (B L.)

My dear Jervis,

Longden agrees with me in thinking that you should, even now, submit a full explanation in writing, for the consideration of his Excellency; and he bids me say, that he will undertake to submit it to Sir William. Appendix (B L.)

If you will take our advice in a proper spirit, I feel sure you will never regret it.

Your's truly,
12 May 1866. (signed) *D. M. Stewart.*

Appendix (B M.)

It is particularly requested that the dates of discharge may be noted. Appendix (B M.)
Advanced, at Kussowlie Commissariat office, 12 rupees.

(signed) *T. H. Sibley*, Lieut. Colonel,
14 April 1866. A. C. General.

Discharged, 16th April 1866.
(signed) *Scott Jervis*, Captain and
Head Quarters, Simla, Aide de Camp.
16 April 1866.

Endorsement of annexed document at foot.

No. 43.

Itlanamah of Hackeries proceeding with Stores of his Excellency the Commander in Chief towards Kalka, under command of on 186 .

Description of Carriage, &c.	No.	Rate of Hire.	Date of Entertainment.	Remarks.
Hackeries of 4 bullocks, each - -	4	Marching, at 4 annas per bullock per diem. Halting, at 2 annas per bullock per diem. Return hire as usual.	31 Mar. 1866	
TOTAL - - -	4	or 16 bullocks.		

Advanced at Delhi, at three rupees each. Total 48 rupees (forty eight).
One churndar, at five rupees per month, and entitled to usual return pay; advanced at Delhi, 2 rupees (two rupees).

Note—It is particularly requested that the date of discharge of the carts, &c., may be noted on the back of the document, and given back to the cart-owners.

(signed) *W. G. Smith*, Lieutenant,
Assistant Commissary General.

Executive Commissariat Office, Delhi.
31 March 1866.

Appendix (B N.)

Appendix (B N.)

Endorsement of annexed document at foot.

Discharged on 16th April 1866.

(signed) *Scott Jervis*,
Captain and A.D.C.

Head Quarters, Simla,
16 April 1866.

Memo.
Itlanamah. Certified that one cart of three bullocks, laden with property of his Excellency the Commander in Chief, entertained at Kalka on the 12th April 1866, entitled as follows:—

Marching hire at 6 annas per bullock per diem; halting 3 annas. Ditto, ditto return hire as usual.

(signed) *Beeharee Lall*, Pdt.
Godn. Goma.

Kalka Commissariat Office,
12 April 1866.

(signed) *W. Browne*,
12/4/66. Condr. Commt. Charge, Kalka.

N. B.—The following was written across the above Memorandum with *red* ink:—

Discharged, being broken down, and entertained in lieu one two-bullock cart on the 13th April 1866, advanced 2 rupees. Two only.

(signed) *J. H. Sibley*, Lt. Col.,
14/4/66. A. C. General.

Note.—It is particularly requested that the date of discharge may be noted on the back of this document.

Appendix (B O.)

His Excellency the Commander in Chief, *Dr.*

Appendix (B O.)

		Rs.	*a.*	*p.*
Poorgees for September 1865		245	14	8
Ditto - October „		303	8	–
	Rs.	549	6	8
Khansamah's daily account for October		301	9	11
Oil bill for September		158	2	–
Ditto October		71	–	–
Wages for servants for September and October		612	2	6
TOTAL *Rs.*		1,692	5	1
		400	–	–
	Rs.	1,292	5	1

N.B.—The following was written across the above document :—

Paid 14/11/66, *Rs.* 1,692.
(sd.) *S. J.*

Out of this deduct *Rs.* 408. 10. 4., being amount of my bills. Remainder paid on account of Commander in Chief's; I have still a bill due of about 177 rupees for August, omitted to be paid; there is also one bill for coolies not paid of Commander in Chief's, of about 195 rupees, likewise for August.

N.B.—This part in handwriting of Captain Jervis.

Appendix (B P.)

Captain Scott Jervis, *Dr.*

DAILY account of Hossen Khan Khansamah for the months of September and October 1865 :—

Appendix (B P.)

		Rs.	*a.*	*p.*
Poorgees for September 1865		81	12	–
Ditto - October „		40	5	–
	Rs.	122	1	–
Daily account of Khansamah for September		74	14	–
Ditto - - ditto - - October		211	11	2
	Rs.	408	10	2

Appendix (B Q.)

(No. 158A. of 1866.)

To Lieutenant Colonel *Young*, Deputy Judge Advocate General at Head Quarters.

Appendix (B Q.)

Sir,

I AM desired by the Commander in Chief to request that you will lay the enclosed Memorandum, No. 118 of this date, before the General Court Martial assembled for the trial of Captain E. S. Jervis, 106th Foot, with a view to revision of the finding on the first and second charges.

This memorandum conveys a careful analysis of the evidence; together with my opinion on that evidence, on the admissions of the prisoner, and on the force of the presumptions of law, as liable to affect a verdict in his case.

2. I am further directed to intimate that his Excellency has purposely abstained from giving any, the slightest, opinion at this stage, on the merits of the finding recorded by the Court Martial.

3. As, however, most grievously against his will, an inexorable sense of duty compelled the Commander in Chief to place Captain Jervis on his trial, when that officer declined to clear his character, as required by military regulation and custom, of allegations of scandalous conduct; so the same sense of duty again compels his Excellency to refer, for the consideration of the Court Martial, the analysis and conclusions it has been my duty to lay before his Excellency, after the most careful and elaborate examination of the testimony, oral and documentary, submitted to the Court, and the arguments in defence and reply.

4. I am instructed to remark that the revision of the finding affects only the first and second charges. It will occur to the Court that if, on further deliberation, it should see cause to make an alteration in the finding with regard to the first charge, an alteration will become necessary, under Article 79, in the framing of the sentence, although the result to the prisoner would be the same, viz., the loss of his commission in Her Majesty's Service.

I have, &c.
(signed) *Fred. C. Maisey*, Lieut. Colonel.
Offg. Judge Advocate General.

Judge Advocate General's Office,
Head Quarters, Simla, 11 September 1866.

Appendix (B Q 2.)

No. 118 of 1866.

MEMORANDUM.

Judge Advocate General's Office,
Head Quarters, Simla, 11 September 1866.

Appendix (B Q 2.) SUBMITTED Proceedings of an European General Court Martial assembled at Simla on Monday, the 25th of June 1866, for the Trial of Captain E. S. Jervis, Her Majesty's 106th Foot.

President.
Brigadier General Brind, C.B., Royal Artillery.
Judge Advocate.
Lieut. Col. Young, Officiating Deputy Judge Advocate General at Army Head Quarters.

THE General Court Martial which assembled by your Excellency's order on the 25th of June last, for the trial of Captain Ernest Scott Jervis, Her Majesty's 106th Foot, closed its proceedings on the 29th of August, after a trial of unusual length, and in some respects unusual difficulty. The difficulty, however, has arisen, not so much in the evidence (which was closed on the 24th July, and is, as respects most of the facts in issue, perfectly clear and undisputed), as in the extraneous matter, and lengthy arguments with which it is surrounded, and which have, undoubtedly, a tendency to obscure and confuse it.

2. The Court has recorded the following opinion: That Captain Jervis is not guilty of the first and second charges, of which he is acquitted accordingly; and that he is guilty of the third, fourth, and fifth charges. And the sentence is, "To be dismissed the service;" coupled with the following recommendation to mercy:

"The Court having awarded a sentence of dismissal, and marked their sense of the prisoner's military misconduct, do now beg to recommend him to mercy, in consideration of the extenuating circumstances disclosed in the proceedings."

3. I have carefully and anxiously considered the evidence in this case; the several presumptions of law and of fact arising from it; and the many assertions and arguments to which it gave rise; and I have now to report to your Excellency, that I am forced to dissent from the acquittal on the first and second charges, while entirely concurring in the conviction on the third, fourth, and fifth.

4. I cannot but think that those acquittals, by a Court which has devoted so much patient labour to this wearisome case, are attributable partly to the want of a detailed analysis of the evidence, after the conclusion of the arguments, and partly to views of the evidence, and other opinions expressed in the summing-up, from which I must dissent. I have underlined, in red ink, the portions of the summing-up in which I am unable to concur; but at the same time I beg to express my entire concurrence with the remainder of that able document, as well as with the legal opinions and quotations contained in the exhaustive reply of the prosecutor. My views on the points wherein I differ from Lieutenant Colonel Young will be found further on, and I have simply stated the fact here to prevent confusion.

See pages 162, 163, 164.

5. My analysis and remarks will, at any rate in this memorandum, be confined to the first and second charges, and a consideration of the case thereupon against or for the prisoner.

FIRST CHARGE GENERALLY.
Evidence of H. E. the Commander in Chief, 12, 13.
Major Flood, 36, 37.

6. It is clearly established in evidence, and admitted by the prisoner, that between the dates embraced in this charge (as well as for a considerable period formerly), Captain Jervis was an Aide-de-Camp on the personal staff of his Excellency the Commander-in-Chief, and that, as such

such, he was in charge of his Excellency's household accounts, and of all books and papers connected therewith, as well as of the property of various kinds adverted to in certain of the books.

Nuna Khan, 48.
Hussun Khan, 49.

It is also proved that in March 1865, Captain Jervis was made aware that the charge of the household accounts and books was part of an Aide-de-Camp's duties; and that in April 1866, after some demur on his part, he both recognised and accepted such charge as part of the "military duties" of his staff appointment.

Evidence of the Commander in Chief 12.
Captain Jervis's letter, dated 16 April 1866, 12, and Appendix A.I. K. L. M. N. N 2, O. P. P 2, and Q.

7. It is proved that when, on the 1st September 1865, Captain Jervis took charge of the household accounts from Captain Christie, he received, besides 87 rupees in cash, a certain quantity of wines and stores, as shown in the books, the said wines and stores being the property of the Commander in Chief, and entrusted to Captain Jervis, as usual, for his Excellency's use only, according to the custom of the establishment, which, it is declared, permitted of no other use. It is shown that, in so taking charge, Captain Jervis was exceedingly particular in insisting on the due closure of Captain Christie's accounts; and that they were closed accordingly up to date, all the usual house payments for August being paid in August, and before Captain Jervis took charge.

FIRST CHARGE.

First instance.

Evidence of the Commander in Chief, 12, 13.
Cash Book or Ledger No. III.
Cellar and store books.
Evidence of the Commander in Chief and accounts in Cash book III.

It is, in the next place, proved and admitted, that for part of September, October, and part of November 1865, Captain Jervis was living in a house of his own at Mahasoo, not in attendance on the Commander-in-Chief, though still retaining the charge of the accounts and stores; that during the above time he had resident guests, and gave several parties, at some of which there were from 10 to 14 guests; and in two of which a brother aide-de-camp joined: it is also proved and admitted that this other aide-de-camp (Captain the Honourable W. Harbord) paid for his share of the said parties, in October 1865, and that the sum paid by him, 220 rupees, was credited to Captain Jervis's private account.

Evidence of the Commander in Chief, 20, 30.
Major Flood, 38.
Captain Harbord, 44, 46.

Evidence of Captain Harbord 44.
Commander in Chief, 31.

Appendix A U. and A U 2.

It is proved, and admitted, that during the above period, Captain Jervis ordered out wines and stores, the property of the Commander in Chief, and consumed the same at Mahasoo; and it is not only proved that such procedure had, until adopted by Captain Jervis, been unknown, and was never authorised in his case, but that Captain Jervis never reported his use of the wines and stores, either to the Commander in Chief, or to any member of the household.

Evidence of the Commander in Chief, 20.
Captain Harbord, 44, 46.
Nuna Khan, 48, 49.
Baboo Khan, 51, 52.
Cellar and store books, and admissions in defence 75, 79, 80, 82, 96, 97.
Evidence of the Commander in Chief, 14, 20, 27, 29, 31.
Major Flood, 38.

Farther, it is proved that what wines were sent out were, by Captain Jervis's order, written down by his own private servant, and that part, at any rate, of the wines and stores consumed at Mahasoo were entered in the Commander in Chief's daily expenditure books, kept by, or under the orders of, Captain Jervis.

Evidence of Nuna Khan, 48, 49.
Cellar and store books.

Again, it is proved and admitted, that up to the 30th November 1865 (beyond which date no general account whatever has been produced), no credit to the Commander in Chief in money appears, on account of his wines or stores used by Captain Jervis; and that with one trivial exception noted by the Court, no refund in kind appears anywhere up to May 1866; nor is there any note or memorandum from which intended refund can be inferred, while the accounts that have been given in show refunds recovered by Captain Jervis on other distinct accounts.

Evidence of the Commander in Chief, 15.
Admission by prisoner, 15.
Cash Book No. III., 15.
Evidence of Abbey, 58.
Minute by Court, 15.

Pages 14, 15, 20.
Court's Minute, 15.

As to the quantities of wines and stores, &c., appropriated by Captain Jervis, and subsequently debited by him, or under his orders, to the Commander in Chief, there is evidence of two kinds.

Nuna Khan, the abdar in charge, states, that while Captain Jervis was at Mahasoo, the following liquors were sent out by his order, viz., champagne, sherry, beer, sauterne, maraschino, Curaçoa, claret, brandy, and soda-water; and in another place he details, from a partial memorandum made by him at the time, the following quantities as sent, part on the 26th of a month (apparently September), and part on other unspecified dates; there having been, he states, four despatches, one large, and others smaller, as articles were consumed. For greater facility of reference I detail the list in the order in which any of the articles occur in the charge:

Evidence of Nuna Khan, 48, 49.

Sherry	17 bottles.	Brandy	2 bottles.
Champagne	48 „	Maraschino	6 „
Sauterne	3 „	Soda-water	72 „
Pint, claret	16 „	Pint, champagne	18 „
Quart, beer	72 „	Whiskey	2 „

The memorandum referred to states that there were, in all, 33 dozen of sorts, but that all are not entered.

Hussun Khan, Khansamah, deposes that he sent to Mahasoo, by Captain Jervis's order, the following articles, but he gives no details; and with regard to ham and tongue, cannot state

Evidence of Hussun Khan, 49.

state positively whether they belonged to the Commander in Chief, as they came from a shop, and the other articles from the store room (which was also Captain Jervis's office):

Ham.	Lobsters.	Dry fruits in tin.
Bacon in tins.	Herrings a la Sardines.	Other fruits in bottle.
Tongue.	Truffles.	Tea and coffee.
Salmon.	Asparagus.	Sugar candy.
Oysters.	Vinegar.	Carrots.
Fish.	Sauce.	

Evidence of Captain Harbord, 46.

Captain Jervis's order to send out stores is also deposed to by Captain Harbord.

Cellar and store books.
Evidence of the Commander in Chief, 14.
Evidence of the Commander in Chief, 14, and cellar and store books.

In the cellar and store books kept by, or under the orders of, Captain Jervis, there are numerous entries of consumption, as if by the Commander in Chief, in September and October 1865, many of which whether accurate as to dates and amounts or not, are certainly not what they purport to be, viz., entries of consumption by the Commander in Chief; for after the 15th September 1865, all consumption by his Excellency, save that of a most trifling kind, ceased; and after the 14th October he was away altogether, and consumed nothing at all. Two occasions are specially pointed out by his Excellency, as showing consumption which is not his, at any rate not beyond a trifling extent; these are the 2nd and 4th October 1865, when the following entries appear; which I give in the order detailed:—

Wines.			Stores.
2nd October	Qt. Sherry -	25 bottles.	1 bottle mushroom.
	Brandy -	1 „	1 bottle Worcestershire sauce.
	Champagne	24 „	1 „ apricots.
	Sauterne -	12 „	1 „ mustard.
	Beer - -	26 „	1 lb. tea.
	Sodawater -	63 „	1 loaf sugar.
	Lemonade -	6 „	2 lbs. coffee.
	Claret - -	25 „	1 plum jam.
	Port - -	2 „	1 tin assorted biscuits.
	Maraschino -	1 „	1 „ ham.
	Curaçoa -	1 „	1 „ tongue.
4th October	Sherry - -	1 „	1 „ salmon.
	Champagne	12 „	1 „ oysters.
	Claret - -	2 „	1 bottle salad oil.
	Pint do. -	12 „	2 tins truffles.
			1 „ bacon.
			1 „ sardines.
			2 „ asparagus.
			1 bottle Anchovy sauce.
			1 „ olives.
			1 „ mixed pickles.
			1 „ vinegar.
			3 „ tart fruits.

Cellar and store books.

Besides this large detail of consumption (the support given by which to the statements of Nuna Khan and Hussun Khan, as to the large supplies sent out, is self-evident), there are to be added, the book entries of consumption after the 11th October 1865, as follows, none of which could have been the Commander in Chief's:—

Sherry - - -	6	bottles.	Salad oil - -	1	bottle.
Champagne - -	1	„	Harvey sauce -	1	„
Beer - - -	10	„	Tart fruit - -	1	„
Sodawater - -	7	„	Sausages - -	2	tins.
Claret - - -	8	„	Giblet soup - -	1	„
Mushroom - -	1	„	Capers - - -	1	bottle.
Assorted biscuits -	1	tin.	Pâté-de-fois-gras -	1	tin.
Salmon - - -	1	„			

It will be seen, therefore, that without counting any portions of the book entries between the 15th September and 15th October (which must also, if genuine at all, include a considerable expenditure of Captain Jervis's own, his table accounts for that period being large) there is a heavy total of consumption, or in other words "misappropriation," for all of which, save a small portion consumed by the Commander in Chief on the 2nd and 4th October, Captain Jervis is responsible: and it need scarcely be pointed out that entries, if not explained away, show, not only misappropriation, but also debit to the Commander in Chief, in whose expenditure book they appear, without any note or sign to show their true nature.

Evidence of Hussun Khan, 49, 50.
See page 162.

It is also proved by the Khansamah, that even the cost of coolies for taking out the wines and stores to Mahasoo, was charged ultimately in the Commander in Chief's account.

The above, however, though much more than was pointed out in the summing-up, is not the whole of the proof on this instance.

It

It is recorded that the balance of wines and stores for the 31st October and 1st November 1865, is not struck, and carried on; and it is significant that throughout the accounts, from the year 1860, these are the only months which show such an omission. The balance in question, however, which, there being no November entries, is the November balance also, is according to the entries as follows:— Cellar and store books, and evidence of the Commander in Chief, 30.

Qt. Sherry	89 bottles.	Carrots	tins 1	Capers	bottles 6
„ Brandy	6 „	Vermicelli	„ 3	Olives (for olive oil)	6
„ Champagne	53 „	Cocoa nibs	„ 4	Vinegar	bottles 3
Pint „	40 „	Salmon	„ 22	Oude sauce	„ 4
Qt. Sauterne	7 „	Sausages	„ 10	Mushrooms	„ 8
Pint Beer	1 „	Oatmeal	„ 4	Apricots	„ 1
Sodawater	47 „	Figs	„ 2	Mustard	„ 6
Lemonade	70 „	Figs, cake	„ 1	China sugar,	box 6
Qt. Claret (Cutler's)	15 „	Italian paste	„ 1	Brown sugar,	bundles 5
„ Whisky	1 „	Mushroom	„ 2	Loaf	„ 3
„ Beer	1 „	Assorted fruits	„ 3	Coffee	lbs. 11
„ Moselle	3 „	Crackers	„ 5	Raspberry jam.	jars 5
Pint „	10 „	Gelatine	„ 2	Currant jelly	„ 3
Qt. Maraschino	36 „	Apricots	„ 1	Strawberry jam	„ 7
„ Port	11 „	Marron Glacé	„ 4	Orange marmalade	5
„ Curaçoa	38 „	Broketts	„ 2	Plum jam	„ 7
Qt. Dalzell's St. Julien	9 „	Lobsters	„ 2	Ginger	„ 2
Pint Claret	30 „	Truffles	„ 1	Bon bons	„ 5
„ Cherry Brandy	2 „	Barley	bottles 2	Essences (bottles)	20
Qt. Madeira	2 „	Tart fruits	„ 6	Tongues	tins 3
		Oatmeal	„ 3	Lemon peel	„ 3
		Harvey's sauce	„ 3	Orange	„ 1
		Walnut Catsup	„ 2	Cherry brandy,	bottle 1
		Mixed Pickles	„ 4		

It is quite clear, not only from the books themselves, which show no corresponding credit in the Calcutta Stock account for December 1865, but also from Captain Jervis's own statements, that this large balance of wines and stores was not taken down to Calcutta; but was left either at Simla or at Mahasoo, or both; and it is equally clear, from the same books, that it was not re-credited to the Commander in Chief when accounts were re-opened at Simla in April 1866: for it will be seen, on reference, not only that there is no balance whatever on the 1st December, and that the entries of receipts of stock in that month are all fresh receipts, but that the stock and expenditure are regularly and accurately balanced for December 1865, and January, February, and March 1866; and the Calcutta balance of 31st March 1866, appears on the 1st of April, without any addition whatsoever on account of the large 1865 balance previously adverted to! Defence, 77, 78. See also rejoinder, 141

The above remarks refer more especially to the wine account, which is more regular and clear than the store account; but it is quite evident from the latter also, that the Simla balance of 1865 is not re-credited in April 1866.

The butler, Abbey, deposes, with reference to this point, that Captain Jervis made over no wines or stores to the Commander in Chief's credit, when they returned to Simla; and the only surplus anywhere alluded to (if we except the balance of liquor left at Mahasoo in November 1865, by Captain Jervis, and taken back by him in May 1866, which can only be suspected to be part of what he had appropriated), is the insignificant surplus of a few bottles of beer and some brandy, which remained on arrival at Simla, out of a supply taken from the Commander in Chief's cellar, by Captain Jervis, for the trip up-country. Evidence of Abbey, 58. Evidence of Lall Sing, 53. Evidence of Abbey, 61.

Whether any, and if any, what quantity of wines and stores were found in stock, at Simla, in April, does not appear, and Captain Jervis, to whom the point was peculiarly important, and who had the proof of it at his disposal, if proof existed, left it untouched. It is, at any rate, clear that in his cellar and store books, up to the date of his transfer of charge, there is no credit to the Commander in Chief of the large balance of wines and stores which the said books show as for November 1865, and therefore, in default of explanation, Captain Jervis is answerable not only for the misappropriation of these amounts, in addition to what was previously noticed, but also for their debit to the Commander in Chief; inasmuch as what ought to be, and is not credited, is, in effect, debited.

I have been unavoidably prolix in this matter; but it appeared to me absolutely necessary to point out that there seems to be more than ample evidence to sustain even the detail specifications in the first instance. Any items thereof, which it may appear, on close examination, are not embraced in one part or other of the evidence, can be expunged by a special finding.

The formal point of the value of these wines and stores is proved by Major Flood. Evidence of Major Flood, 39.

There is no counter evidence on this instance; and the lengthy cross-examination of the European witnesses, on this, as well as the other parts of the charges, bore almost entirely on collateral, and often totally irrelevant points.

I do not propose to enter at all upon such matters in this memorandum; more especially as they have been so fully and ably considered and exposed in the reply: while the defence and rejoinder have exhausted all the remarks which the prisoner could bring to bear on them.

8. Much of the proof as to the first instance obviously applies to the second. The separate issues are, firstly, that during September, October, and November 1865, the table kept at Mahasoo for Captain Jervis and his guests was supplied by the Commander in Chief's Khansamah: this is fully proved though not apparently admitted. Secondly, that, by Captain Jervis's order, the cost of such supplies, viz., about *Rs.* 700, was about February 1866, charged to the debit of the Commander in Chief. Hussun Khan Khansamah distinctly deposes to the charge as alleged, but he says it was charged and paid in January, not February; and that of the sum then debited, *Rs.* 700, only *Rs.* 504 was on account of Mahasoo expenses, the remaining 196 being on account of an old August bill of which no detail is given.

FIRST CHARGE.

Second instance.
See Summing up, 163, 164.

Evidence of Captain Harbord, 44, 47.
Hussun Khan, 49, 50.
Defence, 82, 83.

Evidence of Hussun Khan, 49, 50.

Not only is this clear testimony given, and without any cross-examination by the prisoner, but the books and documents given in by Captain Jervis himself contain close corroboration, under his own signature, of the witness's statements. Thus; besides the general statement already noticed, Hussun Khan, while explaining that his books and accounts, &c., had been taken and retained by Captain Jervis, detailed from a partial memorandum some items of his charge for table expenses, viz.: For September, *Rs.* 74. 14. 11.; and seven items for October aggregating 233-9.

Evidence of Hussun Khan, 50.

Defence, 83.
Appendix, B O, B P.
Appendix, B O.
* See remarks on this point in reply and rejoinder, pages 117, 118, and 147.

Captain Jervis himself produced two statements of the Khansamah's accounts against the Commander in Chief and himself respectively; in the latter statement the September item tallies with that stated by the Khansamah; and the item for October is *Rs.* 211. 11. 2., or *Rs.* 21. 13. 10. less, an amount very possibly retrenched by Captain Jervis from the charge; while in a memorandum subjoined to the former statement, which whensoever written,* is equally binding as against the writer, he admits the total of the other statement, viz. *Rs.* 408. 10. 2., as a debt due by him.

This same memorandum by Captain Jervis, moreover, also corroborates the Khansamah's oral statement as to a debt due for August, of *Rs.* 196; for it alludes to a debt of about *Rs.* 195 for August, with the difference that it was due by the Commander in Chief, and not by himself, personally.

With regard to the Khansamah's books, the English copies of which only, and not the originals, are produced, they do not show the same totals as the statements above adverted to; the reason doubtless being that they exhibit the daily debits of the Commander in Chief only, while expenditure on his account was current; but the books do contain entries which serve further to corroborate his statement that *Rs.* 504 was the sum debited to the Commander in Chief on account of Captain Jervis's house expenses, (which, it would seem, included petty advances of cash, on "chits" or "purjees.") Thus the total in Appendix B P., which is admitted as correct by Captain Jervis's memorandum, in Appendix B O, is *Rs.* 408. 10. 2.; and in the Khansamah's book for November 1865, we find the following item included in the sum total (*Rs.* 270,) noted as paid by Captain Jervis on the 1st March 1866, viz.

Book marked O, in paper cover marked "Book No. XIV."

Oil	77	10	6
Sundries	63	10	–
Extras	15	12	–

Table expenses from the 1st to the 13th November, inclusive (which were clearly Captain Jervis's own), *Rs.* 66. 9. 3. This added to *Rs.* 408. 10. 2. gives *Rs.* 475. 3. 5. or only *Rs.* 28. 12. 7. less than 504, and *Rs.* 28. 12. 7. is a very moderate calculation for the share doubtless charged by the Khansamah to Captain Jervis, as his quota for 13 days, of the November extra charges, which amounted in all to *Rs.* 157. 0. 6, as in margin.

With regard to the actual debit of this sum of *Rs.* 504 + 196, to the Commander in Chief, we have, besides the Khansamah's statement (which even if inaccurate as to date appears free from suspicion, inasmuch as he admits having been paid by Captain Jervis), the corroborative entries of the books and memorandums already quoted. In Appendix B O, and the memorandum at its foot, we have Captain Jervis's own acknowledgment that the sums of *Rs.* 408. 10. 2. for September and October, and about 195 for August, both due to the Khansamah, formed part of the grand total of *Rs.* 1,692. 5. 1., of which there is his note of payment on the 14th November 1866, and his acknowledgment of at least *Rs.* 408. 10. 2. as his own private debt, which was to be, though there is no proof, that it ever was, re-credited to the Commander in Chief, while in the Khansamah's November book (O) we have Captain Jervis's acceptance as correct, and note of payment, on the 1st March 1866, of the sum of *Rs.* 270 for November, which, as I have shown, includes his own self-evident November debt to the Khansamah! I do not propose to enter upon Captain Jervis's assertion as to the indebtedness to him, at the above periods, of his Excellency the Commander in Chief, or the arguments and counter arguments on that point contained in the reply and rejoinder, nor shall I inquire here as to the real dates of the payments above adverted to, concerning which there seems some doubt and confusion. I merely take the above-mentioned entries as being, what they purport, under Captain Jervis's own hand to be, that is, payments by him, as the Commanders in Chief's agent to the Commander in Chief's servant, and to the Commander in Chief's debit, of certain sums; which sums include his own private debts, to the amount, within a few rupees, if not to the exact amount, stated by Hussun Khan.

The actual date of payment is not a material point.

There is no counter evidence on this instance, and, as already remarked, there was no cross-examination.

9. With

9. With regard to the third instance, it is proved that Captain Jervis had charge of the Commander in Chief's stable from the 1st September 1865 to the 14th April 1866, when he made over charge to Major Gordon; and that he was authorised to purchase what was required for his Excellency, but not to purchase for himself on his Excellency's credit.

FIRST CHARGE.
Third instance.
Evidence of the Commander in Chief, 15.
Major Gordon, 54.

It is proved, and fully admitted, that Captain Jervis, between the dates specified, ordered and obtained for the Commander in Chief, from Messrs. Monteith & Co., articles in excess of the Commander in Chief's requirements, and that he appropriated to his own use certain of those articles specified in the charge, not only without sanction, but without any report of having so done, either to the Commander in Chief or to any one else; and further, that he never at any time mentioned any liability on such account, not even when transferring charge to Major Gordon, on which occasion he told Major Gordon of a large bill being due for horse gear.

Evidence of the Commander in Chief, 15, 27, 31, 32.
Admissions by prisoner, 54, 75, 79, 80, 96.
Major Flood, 38.
Captain Harbord, 45.
Major Gordon, 54, 55.
Ruheemmoodeen, 53.

No entry of refund either in money or in kind anywhere appears on account of the above articles; all of which it is proved are included, on the strength of Captain Jervis's vouchers, in Messrs. Monteith's bill against the Commander in Chief.

Cash and Store books.
Evidence of the Commander in Chief, 15.
Major Gordon, 54 and App. A W, A W 2, A X and A X 2.

Finally, it is proved that Captain Jervis, while in Calcutta, had a separate private account with Monteith & Co.

Evidence of Capt. Harbord, 45.

There is no counter evidence on this instance, and the facts are all admitted.

10. With regard to the fourth instance, it is proved that Captain Jervis travelled as alleged, from Calcutta to Simla, not in attendance on the Commander in Chief; that it was not customary for aides-de-camp when not in attendance to live at the Commander in Chief's expense, and that Captain Jervis was not authorised to do so.

FIRST CHARGE.
Fourth instance.
Evidence of the Commander in Chief, 15, 32, 33.
Abbey, 56.

It is proved, and admitted, that Captain Jervis's miscellaneous road expenses from the 25th to the 29th March 1865 inclusive, amounted to *Rs.* 47. 4., of which *Rs.* 2. 4. only was on account of the butler Abbey, whose expenses were a legitimate charge against the Commander in Chief. Farther, it is proved and admitted, that the daily totals of such expenses, aggregating *Rs.* 47. 4., were, by the express order of Captain Jervis, entered under the head of bazaar expenses in the Commander in Chief's bazaar expenses book, and that this sum of *Rs.* 47. 4. was included in the monthly total in that book, which latter total is included in a monthly memorandum of the Commander in Chief's expenses prepared by Abbey for Captain Jervis, and approved of by him. The witness Abbey also states, that after the entry in the bazaar expense book, he destroyed the vouchers in Captain Jervis's presence. There is no proof of any report of the above expenditure or charge, or of any hint or memorandum on which to base a supposition that refund was intended; on the contrary, it is proved that when leaving Calcutta, Captain Jervis brought with him a supply of wines, beer, soda-water and ice belonging to the Commander in Chief, which rather supports the opposite conclusion.

Evidence of the Commander in Chief, 14, 15.
Major Flood, 38.
Captain Harbord, 45.

Evidence of Abbey, 56.
Admission of prisoner, 83.
Evidence of the Commander in Chief, 32.

Evidence of Abbey, 56, 57, 58, and Appendix B C 2.
See denial in defence, 83.

Evidence of the Commander in Chief, 15.
Admission of prisoner, 15.

Evidence of Abbey, 61, and cellar book.

No counter-evidence was adduced; but Captain Jervis attempted, by a close and somewhat unfair cross-examination, to shake the credit of Abbey chiefly on collateral points; he failed in my opinion to do so in any respect, though he succeeded in confusing the witness, who, so far as I can judge, gave his evidence truthfully, though in a somewhat offensive manner at times.

See summing up, page 163.

11. The defence on the first charge, the only support to which, besides mere assertion and argument, consists of certain books and documents which, in my opinion, tell chiefly against the prisoner, may be best described generally in the prisoner's own words, used in regard to the first and third instances: "I admit the act, but deny, indignantly deny, the fraud." With some trifling exceptions, all the acts or omissions alleged are admitted; while the presumptions and allegations of guilt are denied; former custom, and indebtedness on the part of the Commander in Chief, are pleaded by Captain Jervis as excuses for the alienation of the Commander in Chief's property entrusted to him, which he declares he intended to refund; and finally the prisoner, as he expresses it, takes his stand on the sacred principle of law, that every one is to be presumed innocent until proved guilty.

Defence on First Charge.
Defence, 75.

The mistake of law, which led the prisoner to rely so implicitly on this principle, has been forcibly adverted to both in the reply and the summing up, but the principle is maintained in the rejoinder in a series of clever but unsound arguments, the leading flaws in which are that the offence charged is treated as theft, so as to let in the doctrine that felonious intent must exist "at the time" of taking a rule which does not apply to fraudulent misappropriation; and that the cases cited as illustrative of the unlawful acts, which transfer the onus of proof to the accused party, embrace numerous very grave and palpable crimes, but omit all notice of the identical crime alleged against Captain Jervis, to which, as pointed out by the summing up, the prisoner's arguments do not apply. I submit some further authorities on the points mooted.

Pages, 103, 104, 159, 160.

See Summing up, pages 159, 160, 161, 162.

See Chitty's Criminal Law, I., 558. Roscoe's Digest of the Law of Evidence, 83, 84. Taylor on Evidence, I., 335, 339, 340.

Roscoe, 84. Taylor, I., 343.

12. It is undoubtedly a general rule of law that save where the law itself presumes the affirmative of a charge, the assertor is bound to prove it, and that it is incumbent on the assertor to prove his charge even if he have to prove a negative; for, as so often urged by the prisoner, a party "shall be presumed innocent until proved to be guilty." But it is an equally binding rule of law, that where a point is peculiarly within the knowledge of the accused, the presumption of law in favour of innocence is inoperative, and the "onus probandi," as respects that point, whether it be affirmative or negative, rests with the accused, even though there be a presumption of law in his favour.

Roscoe 197. Taylor, I., 333.

In such cases the usual test as to where the burden of proof rests, is a consideration of "which side will be entitled to a verdict if no evidence be given" as to the point then in issue.

13. The first charge against Captain Jervis involved both affirmative and negative issues, which, under the general rule of law above quoted, the prosecutor had to prove; and which, with the exceptions indicated, have been sufficiently established.

At this stage, therefore, the points proved being criminatory, other points arose on which the "onus probandi" rested with the prisoner; for their proof was peculiarly within his knowledge, and the case, supposing nothing farther to be then adduced, would go against the prisoner; certain unlawful acts and omissions being clearly established against him; and the legal and irresistible presumptions therefrom being, unless explained away, hostile to him. How, then, has the prisoner relieved himself of the onus thus cast upon him?

14. In support of his first plea as to the custom of alienating the Commander in Chief's goods, and re-crediting their value after greater or less intervals, he refers to old books which show that it was, at one time, usual for the officer in charge of the accounts, to supply certain friends and neighbours with spare mutton, the property of the Commander in Chief, and to allow them the privilege of using the services of his Excellency's farrier, and occasionally to receive other friendly aid. He also, at a later stage, shows that money payments on various accounts, partly for travelling and hotel expenses of the personal staff, have been credited to the Commander in Chief, after corresponding payments by his Excellency; but he utterly fails to show that there ever existed, before his own resort to it, such an utterly different custom as that of the officer in charge himself unauthorisedly appropriating the Commander in Chief's wines and stores; and not only is there this important distinction between what he did, and what was formerly done, but the cases are totally dissimilar in regard to entry. Captain Jervis entered nothing to his own debit, either at the time of taking the stores or subsequently, and made no payments to the Commander in Chief; whereas in the old accounts, an exact record was kept of the accommodation granted, and payment was scrupulously exacted, made, and entered to the Commander in Chief's credit.

See, for instance, Captain Jervis's own Memos. extending over many months, in the Sheep book, and corresponding credits in the cash account of the period.

Evidence of the Commander in Chief, 23.

In his attempt to show that such repayments (by third parties) were made after long intervals, he again fails; for out of the four items in 1863, on which he apparently relied to show this, three were adjusted in the middle of November on accounts closed in October, and could not well have been adjusted sooner; and one only (a sum of *Rs.* 9. 8.) was of old standing, and was clearly an item that had been overlooked (by Captain Jervis himself), for on the same day on which it was recovered, the sum of 86 rupees was recovered from the same officer on a similar account.

These, and some instances which are the exact converse of Captain Jervis's own procedure, are, it would seem, the sole ground for his often repeated plea that what he did or failed to do was sanctioned by former custom.

15. As respects "intention," direct proof of which can rarely if ever be adduced, it is by rule of law, where acts or omissions are unlawful, presumable from those acts or omissions themselves.

In the present case, the taking of goods held in trust, without authority and without report; the unauthorised charge of personal expenditure to the Commander in Chief's account; and the partial, if not full entry to his debit of the goods taken, are all proved; as also is the absence of refund, or corresponding credit, or of any note or hint that such was contemplated. It is farther proved that investigation was impeded, and explanation refused, without what can be considered valid and sufficient cause; and that books and vouchers, which alone could clear the prisoner, if innocent, were suppressed or withheld by him, on varying pretexts. The prisoner was therefore doubly bound to demonstrate his honesty of purpose, a point so peculiarly within his own knowledge; for, not only did his own acts and neglects, as charged and proved, point to a wrong intent, but he was obnoxious, in spite of his laboured arguments to the contrary, to the much quoted maxim "omnia præsumuntur contra spoliatorem." Now beyond mere declamation and argument, and somewhat reckless assertion, the prisoner has, in my opinion, adduced nothing to show his honesty of purpose, or the absence of dishonest intent. Indeed, one of his most frequently repeated arguments is the smallness of the sum involved, as showing that he was not likely to have attempted or intended fraud; an argument which, to say the least of it, is singularly infelicitous.

16. As to the plea that the Commander in Chief was indebted to him, which he repeats in the rejoinder, it appears to me to be conclusively demolished in the reply; and I would only add that the very cheque counterfoils on which he relies for proof, in opposition to the sworn

sworn testimony of the Commander in Chief, that he had, before a certain conversation with his Excellency, paid certain bills out of his own pocket, appears to show the exact contrary; for every one of them is marked "on account of Commander in Chief," which, in the absence of proof to the contrary, tends to show that they were drawn not upon Captain Jervis's own bank deposit, but on that of the Commander in Chief himself.

See pages 102, 103.

17. The proof of the second charge, as to both the affirmative and negative issues provable by the prosecutor, appears to me complete.

Second Charge.

It is shown that a Court of Inquiry re-assembled on the 14th May, to investigate farther matters against the prisoner; that Captain Jervis was called upon to attend that Court, and to produce before it certain books and documents, the property of the Commander in Chief; and that the nature of the charges was duly made known to Captain Jervis; and was such as to render the production of the said accounts essential to the clearance of his character as an officer and a gentleman.

Evidence of the Commander in Chief, 16. Col. Stewart, 63, 64, and Statement marked T of Court of Inquiry.

Finally, it is proved that Captain Jervis, though he attended the Court, and heard fully what was alleged against him, did not produce the books and papers demanded; but gave in one book only, stating that the others were incomplete, and were all in confusion, and mixed up with his own private accounts.

Evidence of Commander in Chief, 16, 21. Col. Stewart, 63, 67, 68. Cash-book No. III.

18. No counter evidence was adduced on this charge; but it has formed the basis of some of the longest of the prisoner's pleas, protests, and arguments. The prisoner's arguments in his defence on this charge may be thus summarized:—

Defence on Second Charge.

Firstly. That military action, in matters of a purely private and personal character, is not lawful; and that the duties of an aide-de-camp are not military duties, neglect or misconduct in which can constitute a military offence.

Secondly. That he was never "ordered" to produce books, &c., at the Court of Inquiry; but only "requested," which implied option.

Thirdly. That he had no intimation, until he attended the Court, as to the nature of the fresh matters against him; and, therefore, could not tell that the production of the books and papers demanded was essential to the clearance of his character as an officer and a gentleman.

And *Fourthly.* That being by law privileged from taking part orally in the proceedings of a Court of Inquiry, he is also privileged from producing documents before such a Court.

19. As to the first plea, the summing up seems to imply some doubt, which possibly influenced the Court. I would remark, however, that as stated by the prisoner himself, this plea was urged at the outset, in "bar of trial;" and it was then, as I consider properly, disallowed by the Court after argument.

See summing up, 163, 164. Defence, 272. Page 7.

It is to be noted that Captain Jervis is not charged with "disobedience of lawful command;" so that discussion as to the question of "law" was not necessitated; but it seems to me that no reasonable doubt can exist as to the perfect propriety and legality of an order by a Commander in Chief to an ex-aide-de-camp and manager of his accounts, to produce at a military court his, the Commander in Chief's, property; more particularly when the production of the said property is essential to the clearance of the officer in question from disgraceful imputations, which every military officer is, as such, bound to relieve himself of.

Finally, all other considerations apart, it is a well-known dogma in the army that the duty of military obedience is absolutely imperative on every officer or soldier, and not only all the best military authorities, but the English law courts, have invariably recognised the principle that unless obedience to the orders of a military superior involves a breach of the law of the land, or is absolutely impossible, the order must be obeyed; and disobedience of it is, in a military sense, unjustifiable and penal. It can scarcely be argued that it would be a "breach of law" to produce at a Court of Inquiry books and papers the property of the officer ordering their production, and thus to remove disgraceful imputations; and as to the "possibility" of obeying the order, that has been amply proved by the prisoner's subsequent production of many of the very books called for.

See cases of Sutton *v.* Johnstone, 1782, and Capt. Bennett, 1805, cited in Prendergast, Ed. 1855, pp. 53, 54.

20. As to the second plea, it does not appear to deserve serious notice; as every military officer of any experience must at once see its unsoundness.

21. The third plea is of no weight; for, supposing that Captain Jervis was, up to the time of attending the Court of Inquiry on the 14th of May, ignorant of the new matter against him, he was made fully aware of it by the statement which was read out to him, and which clearly showed how essential to his fair fame was the production of the books and accounts demanded of him. He is not charged with failing to produce these books, &c. when the Court first assembled on the 14th May, but with not producing them at all.

See page 63.

22. With regard to the fourth plea, it is not quite clear whether Captain Jervis, by the use of the term "law," means the general "law of evidence," or the rules and regulations (not law) which govern Courts of Inquiry. If he refers to general law he is in error; for, at the Court of Inquiry he was only a witness, though a suspected one; and by the Indian law of evidence, any witness can be compelled not only to give oral evidence, but to produce any document, even when such evidence or document is self-criminatory. If, on the other

Act II. of 1855, Sec. 23 & 32.

other hand, Captain Jervis merely alludes to the rules of Courts of Inquiry, it is to be observed—

Firstly. That those rules, of which he here claims the benefit, are contained in the "Bengal Military Regulations," an authority to which, when it suits his purpose, he loudly demurs.

Secondly. That the object of the protective rule alluded to is to guard accused parties from criminating themselves; a result which, according to Captain Jervis's own repeated statements, could not have accrued to him from the production of the books, seeing that they were, as he says, calculated to prove, and have proved, his entire innocence; and

Thirdly. That he has himself, in the course of the late trial, distinctly recognised the right of the Commander in Chief to "demand" from him all accounts between themselves, which were precisely the accounts which were demanded. Moreover, in conclusion, it is to be observed that, at the time, none of these numerous pleas were urged. Captain Jervis did produce one book, before he heard anything about the new charges; he gave certain reasons, already quoted in this report, for not producing the others; and he appears to have been prepared to produce those others, on completion; a wise determination which he afterwards abandoned.

23. Having completed my analysis of the case, I submit to your Excellency that the Court should be invited to reconsider its verdict of acquittal on the first and second charges.

24. It appears to me that on the first charge, the preamble is sustained: that the first instance is proved in full, or at the least to a very large extent, which can, if considered necessary, be declared by a special finding: that the second instance is proved, but that a special finding is necessary, correcting the date alleged, and the specification of the sum debited: that the third instance is proved: and that the fourth instance is proved to the extent of 45 rupees, there being a clerical error of 10 annas in the total stated; and *Rs.* 2. 4. being shown to have been expended for the Commander in Chief's servant Abbey.

Even should the Court adhere to its opinion that there was no dishonesty or fraud, it should, in accordance with numerous precedents, record a special finding as to the facts, of which no question exists; and as to whether those facts, though not warranting all, warrant any of the several allegations in the preamble.

As it stands, the acquittal, in effect, declares that facts and allegations are alike groundless, which can scarcely have been the intention of the finding.

With regard to the second charge, it is, I consider, proved in full; and the acquittal is not only opposed in some measure to the Court's ruling on the "plea in bar," but is antagonistic to the verdict of guilty on the third charge, which charge in effect alleges a similar crime to the second; for the sole end and object of Captain Jervis's attendance at the Committee of Audit was to produce and explain the identical accounts which he failed to produce at the Court of Inquiry.

(signed) *Fred. Maisey*, Lieut. Colonel,
Offg. Judge Advocate General.

To his Excellency the
Commander in Chief.

(True copies.)
(signed) *J. N. Young*,
Lieut. Colonel, Judge Advocate.

COPY

OF

THE PROCEEDINGS

OF THE

SIMLA COURT MARTIAL.

(*Mr. Brett.*)

Ordered, by The House of Commons, *to be Printed,*
22 *July* 1867.

[*Price* 2 *s.* 6 *d.*]

464.

Under 20 *oz.*

SIMLA COURT MARTIAL.

RETURN to an Address of the Honourable The House of Commons, dated 9 July 1867;—*for*,

"COPIES of a DESPATCH of the 17th day of January 1867, from the Field Marshal Commanding in Chief to the Commander in Chief in *India* relative to the SIMLA COURT MARTIAL, with the Answer thereto:"

"And, of any CORRESPONDENCE between the Secretary of State for War and the Secretary of State for *India* relative to the proposed GRANT to Captain *Jervis* of the Price of his Commission."

War Office, 16 July 1867. JOHN S. PAKINGTON.

COPY of a DESPATCH from the Field Marshal Commanding in Chief to the Commander in Chief in India.

Sir, Horse Guards, 17 January 1867.

THE Field Marshal Commanding in Chief has directed me to acknowledge the receipt of the various letters and papers which your Excellency has forwarded from time to time, in explanation of the course which you have adopted with reference to the conduct of your late aide-de-camp, Captain E. S. Jervis, 106th Foot, and of the reasons which in your judgment rendered it incumbent on you to bring that officer to trial by general court martial.

2. These documents further explain for his Royal Highness's information, the grounds on which you felt it be your duty to set aside the Court's recommendation to mercy, and to carry out the sentence of dismissal passed on Captain Jervis, entering, in your remarks on the proceedings, an opinion strongly adverse to the finding of the court martial on the charges affecting that officer's honour.

3. These papers, together with those on the same subject which have been received by the Adjutant General of the Forces from Captain Jervis himself, have occupied his Royal Highness's very earnest attention, and as the proceedings of the trial have been officially submitted by the Right Honourable the Judge Advocate General, it becomes necessary for his Royal Highness, in reply to your reference on the subject, to express and communicate to you the opinions he has formed on this very distressing and embarrassing case.

4. The Field Marshal Commanding in Chief has not himself entertained any doubt as to the competency of your Excellency to bring Captain Jervis to trial, on the charges which you preferred against him in reference to his alleged fraudulent and dishonourable conduct; but as that officer has protested against this exercise of your authority on the ground that certain of the offences with which he was charged were of a non-military nature, and therefore not within the cognizance of a military court, his Royal Highness deemed it necessary to refer the case to the Judge Advocate General, the Right Honourable J. R. Mowbray, in view to obtaining an official legal opinion on the point in question.

5. That gentleman, after analysing the several instances of the first charge (which allege fraudulent and dishonest appropriation), expressed his opinion as follows:

"I am of opinion that such conduct (of which there was some evidence against Captain Jervis) amounted in law to scandalous behaviour, unbecoming

the character of an officer and a gentleman, and that it was therefore legally competent for the Commander in Chief in India to bring Captain Jervis before a military court upon this charge.

"This opinion is independent of the question whether the duties entailed by the confidential position which Captain Jervis occupied in the Commander in Chief's household, are to be considered military duties.

"I incline to the opinion that an officer on the staff of the Commander in Chief, taking charge of the Commander in Chief's household, does not do so as a military duty in the proper sense of that term, but that he voluntarily accepts such charge as a social or domestic duty which is annexed by the custom of the service to his position, or which is imposed as a condition of his tenure of office by the Commander in Chief, who can remove him at pleasure. I am further of opinion that Captain Jervis's letter of the 16th April 1866, acknowledging the receipt of a memorandum from the Commander in Chief, directing him to understand that he was to continue in charge of Sir William Mansfield's establishment as a military duty, could not increase the measure of his responsibility to military criminal law.

"But it is in my view immaterial to the question of the jurisdiction of the Court on this charge, whether the true view of the duties in question is that they were military or that they were civil. The charge was essentially a charge of fraud and dishonourable conduct, and was on this ground in my judgment within the legal cognisance of a court martial."

6. In regard to the second charge, the Judge Advocate General records his opinion that it does not disclose any legal offence, and his Royal Highness thinks it right to communicate to your Excellency that gentleman's reasons for this opinion in his own words:

"I have come to the conclusion that this charge does not disclose any legal offence. Assuming that it was part of the military duty of Captain Jervis to keep the books, accounts and vouchers, in question, and to produce them when so ordered by the Commander in Chief, I consider that Captain Jervis was nevertheless privileged to decline producing those documents to a Court which was inquiring into his conduct upon a criminal charge. The letter of Colonel Longden (the Adjutant General) to Captain Jervis, requesting him to attend at the court of inquiry with all the accounts, books, papers, &c., in his possession, if considered as an order to produce these documents to the court of inquiry, was in my opinion not a lawful order, upon the principle which is fully recognised in the administration of military as well as civil justice, that a man is not bound to criminate himself, whatever be the nature of the charge.

"It is in my opinion incorrect to designate Captain Jervis as a witness before the court of inquiry; he was the accused person, and the court, as Colonel Longden's letter stated, was held for the purpose of inquiring into the accusations against him. By the custom of the service, which is in conformity with the principles of law above stated—

> "Although an officer cannot refuse to obey an order directing him to appear before a court of inquiry charged to inquire into his conduct, yet he may object to take any part in the proceedings, and has a right to decline answering any questions or making any statement which may, in his opinion, be prejudicial to him in the course of any ulterior proceedings.

"This rule would clearly entitle Captain Jervis, in law, to decline producing any documents, although ordered or requested to do so.

"An order, I may add, may no doubt be in the form of a request, and Colonel Longden's letter, so far as it requested Captain Jervis simply to attend at the court of inquiry, was in my judgment a military order, for such an order was valid; but so far as it requested him to bring all the papers, books, &c., as such an order would not be valid, it was in fact, as in law, no order to Captain Jervis, but only an offer to him of an opportunity to clear his character, and an intimation that the production of the books was considered indispensable for that purpose. In my opinion, however, the production of the books before the court of inquiry was not, as stated in the charge, essential to the clearance of his character as an officer and a gentleman, for Captain Jervis was entitled in law to reserve his defence for a court martial. But in saying this, I must not be understood to mean that I approve of his conduct in availing himself of that strict legal right."

So

So fully does his Royal Highness concur in this latter view, that he cannot bring himself to understand why Captain Jervis, if he were strong in the conviction of his own integrity, did not voluntarily produce the books in question.

7. But, whilst admitting in its fullest sense your Excellency's competency to bring Captain Jervis to trial on the first charge, the Field Marshal Commanding in Chief cannot divest himself of the duty which is imposed on him of considering the question with reference to the expediency and propriety of such a procedure; and after a most anxious review of the whole case, and with a very decided wish to uphold to the fullest extent the high office and authority of the Commander in Chief in India, his Royal Highness, with great reluctance, feels himself compelled to dissent from your Excellency as to the advisability of the measure, and to inform you that the course you adopted was not one of which he can approve.

8. His Royal Highness is aware that it is quite in accordance with custom, especially in India, for an aide-de-camp to be entrusted with the control and management of the household of the Commander in Chief, or General on whose staff he is serving, and his Royal Highness is not prepared to express any opinion on this practice, further than to state, that he concurs generally in the legal views expressed by the Judge Advocate General on this point, and that he considers such duties to be of a purely social and domestic nature, undertaken voluntarily by the aide-de-camp, though accepted as a condition of the confidential domestic post he occupies, which he holds at the pleasure of his general; and his Royal Highness is very decidedly of opinion that they cannot be regarded as strictly military duties entailing in their execution military responsibility and military subordination.

9. Entertaining these views, therefore, the Duke of Cambridge is unable to concur in the propriety of the instructions contained in your Excellency's memoranda, dated 30th March and 14th April last, drawn up for the guidance of the officers of your personal staff, similar documents to which have never before come to his Royal Highness's notice, nor can his Royal Highness admit that Captain Jervis's acknowledgment of the receipt of your instructions directing him to understand that he was to continue in charge of your establishment as a military duty, could, to use Mr. Mowbray's own expression, "increase the measure of his responsibility to military criminal law."

10. But granting even that your Excellency's views as to the position and duties of an aide-de-camp were correct, the Field Marshal Commanding in Chief greatly deplores that the first steps taken by you in reference to Captain Jervis, should have been of a nature so calculated to lead to opposition to your authority, and eventually to the necessity for bringing him to trial. His Royal Highness cannot help thinking, that had you, in the earliest stage of these proceedings, acted in a more conciliatory manner towards him—and, considering the long and personal intimacy of your relations with that officer, his Royal Highness is impressed with the conviction that your aide-de-camp had a claim to such consideration at your hands—much of what afterwards occurred might have been prevented, and a great and deplorable scandal averted.

11. His Royal Highness conceives that the course to have adopted on its becoming known to you that the management of your household and farm was not in accordance with your belief and intention, was for your Excellency to have recalled Captain Jervis from his temporary leave of absence, and to have invited him to explain personally to you any matter in which it appeared to you that his conduct was questionable; a private invitation on your part to enter into a full and unreserved explanation was far more calculated to lead to a satisfactory result than the semi-official demand conveyed to Captain Jervis through your military secretary.

12. The Duke of Cambridge makes every allowance for your feelings of surprise and mortification at believing yourself to have been deceived by an officer of your personal staff, in whom for years you had placed such entire reliance, and his Royal Highness understands how distasteful it would have been to you to have had to avow personally to that officer that your confidence in him was shaken. Notwithstanding, however disagreeable to your feelings the adoption of such a course, his Royal Highness is convinced that it was the

proper and judicious one, and deeply regrets that you did not follow it. Still more does he regret your having entered into a personal examination of your servant on matters so materially affecting Captain Jervis's character, without inviting that officer to be present personally to explain or refute the accusations made against him. It appears to his Royal Highness that it was only due to Captain Jervis to give him this opportunity of entering into a personal explanation; and that this apparent want of consideration for his feelings as an officer and a gentleman was eminently calculated to lead to continued misunderstanding, and to rash and ill-considered action on the part of your aide-de-camp.

13. His Royal Highness does not overlook the fact remarked on by your Excellency, that Captain Jervis never did, in so many words, ask for an interview, but his wishes on the subject appear to his Royal Highness unmistakeably shown in his note to your military secretary, dated 3rd May, in which he says, "I only beg to be afforded an opportunity of explaining, before measures are carried into effect which must prove the most utter ruin to me professionally."

14. In making these observations, the Field Marshal Commanding in Chief does not seek to palliate the insubordinate conduct of Captain Jervis, which is in every respect reprehensible, and which he condemns in the strongest terms; but, in reviewing the case, it is incumbent on his Royal Highness to take all its bearings into consideration, and to point to the causes which led to that insubordination, and to show how in his opinion it might have been averted.

15. But as these inquiries proceeded, and the conviction gradually forced itself on your Excellency's mind, that in Captain Jervis's conduct there was something more than mere irregularity, and that he had been guilty of fraudulent acts impossible to overlook, or to be visited by mere dismissal from your staff, the question as to the nature of the proceedings to be adopted required the gravest consideration, and before determining to arraign him before a military court, it was of all things incumbent on your Excellency to weigh the consequences of that measure with reference to your own position as Commander in Chief and its effect on the discipline of the army.

16. That these considerations were not entirely overlooked by your Excellency, his Royal Highness freely admits, for in your memorandum dated 4th June, you drew attention to the fact, that a military trial would lay you open to the misconstruction that you would be a judge in your own cause; but his Royal Highness feels it difficult to suppose that when you resolved on this course you had fully appreciated the gravity of these objections, and foreseen the extent to which the dignity and authority of your high office would be compromised by an appeal to a court before which you would appear as prosecutor and witness, and the proceedings of which would be submitted to yourself clothed with all the powers of a revising officer.

17. Had these difficulties presented themselves to you with the force they ought to have done, it is impossible, his Royal Highness conceives, that you would have allowed your better judgment to have been overruled by the opinions of the officers of the staff at head quarters whom you consulted, and in whose reasons for recommending a military trial his Royal Highness is unable to concur.

18. Having thus, as briefly as the important nature of the subject will admit of, expressed to you the opinions of the Field Marshal Commanding in Chief on the preliminary measures adopted, it is now my duty to convey to you his Royal Highness's views on the action taken by your Excellency with reference to the proceedings of the court before which Captain Jervis was arraigned.

19. His Royal Highness willingly accepts your assurance of having been actuated by conscientious motives in the conduct of this case, and believes that in thus bringing a criminal charge against Captain Jervis, you were prompted by the conviction that you were performing a duty forced upon you by the requirements of the service.

20. It is impossible, however, to forget that, considering the very unusual circumstances of this trial, the personal interest you had in it, and the intimate professional

professional connection which had existed between yourself and Captain Jervis, it was peculiarly incumbent on you to be guarded in your course of action, with the special object of shielding yourself from all suspicion of being influenced in the slightest degree by interested or personal feelings.

21. In such a matter your Excellency might well have been satisfied, unless the case disclosed the gravest and clearest cause to the contrary, which, in his Royal Highness' opinion, it did not, to leave it in the hands of a Court composed of officers of rank and experience, taking the assurance to yourself that, so far as their duty would permit them, they would defend your Excellency's interests and high position, judging the case on its own merits as the facts came before them in evidence.

22. It is difficult to suppose that such a Court would have entered on its duties without a deep conviction of its responsibility and of the difficulties which were before it in conducting this trial. It might have been anticipated, therefore, that the officers composing that Court would apply themselves with an earnest endeavour, and with an unbiassed judgment, to arrive at a verdict which would at the same time satisfy justice, and maintain your Excellency's authority.

23. The Duke of Cambridge fully anticipated that these considerations would have had their due weight with your Excellency in your final disposal of these proceedings, and it was with the deepest regret, therefore, that his Royal Highness found that his anticipations had not been realised.

24. After a patient and protracted sitting, in which every fact and argument that could be adduced in support of the prosecution had been brought forward, the Court acquitted the prisoner of the charge of scandalous conduct, found him guilty of insubordination, and whilst recording a sentence of dismissal, and thus marking their sense of his military misconduct, recommended him to mercy "in consideration of the extenuating circumstances disclosed in the proceedings."

25. Differing with the Court in their conclusions, your Excellency directed a revision of their finding on the first and second charges, forwarding for their consideration a careful analysis of the evidence drawn up by the Judge Advocate General of the Bengal Army, together with his opinion on that evidence, on the admissions of the prisoner, and on the force of the presumptions of law as liable to affect a verdict in his case.

26. The Court having carefully reconsidered the whole of the evidence, and also the communication which you caused to be made to it, adhered to their original finding. In confirming this finding, your Excellency announced in your General Orders why you were unable to concur in the acquittal on the first and second charges, and why you felt yourself precluded from attending to the Court's recommendation to mercy.

27. It becomes the duty of the Field Marshal Commanding in Chief, under these circumstances, to inform your Excellency that he cannot approve of the remarks which you have thought fit to publish in your General Orders; for his Royal Highness cannot ignore the fact that those remarks have a practical tendency to weaken the independence of courts martial, to bring contempt on military tribunals in the eyes of the public, and to affect the discipline of the army in a very material degree.

28. In respect to the verdict of acquittal on the first charge, on which your Excellency has animadverted, I am directed to forward the following remarks on the subject by the Right Honourable the Judge Advocate General. These remarks, I am to state, have reference only to the first charge, Mr. Mowbray's opinion on the second charge having been given in a previous portion of this letter.

"Speaking generally, the prisoner admitted the facts which were specified in the several instances of the first charge, and which were given in evidence by the prosecution, but he denied the fraudulent intent, which was the gist of the charge. The Court accordingly, in acquitting him, must be deemed to have taken the facts as proved and admitted, and to have come to the conclusion that the fraudulent intent alleged was not established.

"This question of Captain Jervis' intention was very difficult and complex; it was to be determined only by a fair and just consideration of all the evidence which the Court had heard and seen, and of all the surrounding circumstances, and as such was a question within the special province of the Court.

"The evidence, as it appears to me, admitted reasonably of a conclusion either of the prisoner's guilt or of his innocence. No point which could possibly be urged in favour of a conviction was omitted in the very able reply for the prosecution, and all the arguments which could tell against the prisoner were accumulated with remarkable subtlety and ingenuity in the minute and accurate analysis of the whole case drawn up by the Judge Advocate General of Bengal, when the Court were ordered to re-assemble for the purpose of revision; and this last document was submitted to the Court with the further sanction and authority of the Commander in Chief.

"The Court deliberately found in favour of the prisoner, and I do not feel myself justified in saying that such finding was wrong."

* * * * *

"I think it right to add, that I have confined myself to reviewing the case as it was presented to the Court upon the trial."

29. In this opinion his Royal Highness entirely concurs, feeling sure, from a perusal of the proceedings, that the Court had every opportunity of arriving at a just judgment, and only formed it after a most anxious consideration of every fact and argument brought before them.

30. In rejecting the recommendation of the Court in the prisoner's favour, his Royal Highness considers your Excellency to have allowed yourself to enter into observations which he extremely regrets with reference to their probable effect on the army at large.

His Royal Highness' long experience of the practice of courts-martial, and of the feelings which influence the great body of officers of the army in the exercise of this most important duty, convinces him that had a non-commissioned officer or soldier been arraigned before a court martial for an act of insubordination into which the Court believed he had been led by circumstances which might be considered in extenuation, as in the case of Captain Jervis, the Court, whether regimental, district, or general, would have awarded a sentence commensurate with the offence, accompanying it with such recommendation to mercy as would lead to a mitigation or remission of the punishment.

31. In this conviction his Royal Highness cannot accept your Excellency's remark, that to attend to the Court's recommendation in favour of Captain Jervis would lead to the belief that there is one law for the officer and another for the soldier.

32. Your Excellency draws the attention of his Royal Highness to the fact of the prisoner not having received a "full and honourable" acquittal, and that the absence of these words in the verdict leaves him not entirely free from the imputation conveyed in the preamble of the charge. His Royal Highness admits that, according to the custom usually observed in the case of officers tried on charges affecting their honour, the addition of the words "fully and honourably" would have been a more satisfactory acquittal, as recording a more complete vindication of Captain Jervis' character; but, on the other hand, it must be observed that the Court did record a recommendation to mercy.

33. But, in truth, without pursuing these arguments further, his Royal Highness greatly deplores that when you found yourself unable to concur with the Court and to act on their recommendation, you did not altogether refrain from dealing with the case yourself, and adopt the proper and obvious course of referring the proceedings to England, for submission to the Queen, to be disposed of according to Her Majesty's pleasure.

34. Had your Excellency done this, following the precedent afforded in the case of the trial of Captain ————, in which your predecessor, unable to concur in the decision of the Court, submitted the proceedings to his Royal Highness for Her Majesty's consideration, you would have acquitted yourself of all responsibility in the matter, and extricated yourself from a most exceptional and anomalous position.

35. In

35. In conveying to you his views as to the part taken by your Excellency with reference to this trial, the Field Marshal Commanding in Chief has performed a very painful duty, but there is still one point to which he must advert in justice to the Court whose proceedings are under review.

36. It is only due to the President and Members of that Court to state that, although in the opinion of the Right Honourable the Judge Advocate General there were some irregularities admitting of observation, unnecessary to advert to in detail, inasmuch as nothing took place to affect the legality of the trial, the perusal of the proceedings enabled him to say that he considered the Court to have performed their difficult functions with "marked impartiality and sound judgment."

37. His Royal Highness entirely concurs in this opinion; and as he considers it only right and an act of justice to the officers composing the Court that this opinion should be made known to them, his Royal Highness requests you will take measures for giving effect to his wishes in this respect, leaving it to your Excellency to do so in such manner as may appear called for under the circumstances.

I have, &c.
(signed) *W. F. Forster*, Lieut.-General,
Military Secretary.

(No. 7924.)

From His Excellency General Sir *W. R. Mansfield*, Commander in Chief in India, to the Military Secretary, Horse Guards, London, S.W.

Head Quarters, Fort William,
Sir, 19 February 1867.

It is with feelings of the deepest disappointment that I have the honour to acknowledge the receipt of your letter of 17th January 1867, in which the opinions and orders of his Royal Highness the Field Marshal Commanding in Chief are conveyed, with regard to the case and trial of Mr. Jervis, late captain in the 106th Foot.

2. I had ventured to flatter myself that although there might be differences of opinion on matters of detail, there would be none with respect to the action pursued for the maintenance of discipline and integrity among the officers of the army, in one of the most difficult cases which ever tried the endurance and patience of a general officer in high command, and appealed to the first principles of discipline, on which rests the security of Her Majesty's military forces.

3. Notwithstanding my extreme discouragement, I may give expression to one feeling of satisfaction, on the ground that in spite of the great difference of opinion between the Right Honourable the Judge Advocate General and myself, his Royal Highness having been pleased to express his disapproval of the advice tendered by the former, there is no suggestion of even the shadow of illegality in the treatment of this difficult case.

4. Before proceeding to consider your letter in detail, I beg to submit with the greatest deference to his Royal Highness my declaration that from the beginning to the end of the affair forming the subject of the correspondence, I and those who have advised me were pre-occupied with but one idea, viz., to follow the law with the greatest exactness, no possible official precaution having been omitted for the preservation of unbiassed judgment, and the affording every reasonable means of explanation to the accused officer. It was considered that in strict adherence to law and usage alone could the way be found out of the dilemma in which I was placed by the strange and persistent misconduct I was unhappily required to meet.

5. Accordingly the law, as understood by the Judge Advocate General of the Bengal Army, was followed in the minutest particular.

6. As regards my own sentiments, I will only say that I have felt as one without free agency or option. Certain offences involving charges of fraud and insubordination were apparently established on very full and sufficient

 evidence,

evidence, and I was advised, not only by the Judge Advocate General, Bengal Army, but by the Adjutant General and Deputy Adjutant General.

7. These gentlemen, all like myself, most anxious to avoid a difficult business and a scandal, were not able to advise me that the matter could be dropped, but, on the contrary, whilst warning me of the consequent misrepresentation, delivered their opinion that Mr. Jervis should be put on his trial. I may mention in illustration of the above, that, in addition to the very strong and uncompromising opinions to which I have alluded, the following conversation took place between the Judge Advocate General, Bengal Army, and myself, shortly before the trial. Impressed with the odium inherent to the whole matter, I put this question to the Judge Advocate General, Bengal Army. "Has anything been forgotten? Could it have been possible to have let the man get away without a trial?" The answer was, "I do not think so; you must have brought him back for trial if he had gone away."

8. Now I would ask his Royal Highness to understand that I do not in any manner wish to devolve my proper responsibility on others, or to make an unworthy attempt to shift blame to other shoulders.

9. But I think his Royal Highness will recognise the necessity of a general officer in high command generally adopting the legal view placed before him by his constituted legal adviser. In the letter under reply, it is to be observed that his Royal Highness himself leans on the advice tendered by the Right Honourable the Judge Advocate General. It is surely not too much to say that the Commander in Chief in India cannot be held to have acted arbitrarily and of his own will only, when he has done that of which his Royal Highness gives the example in this letter. It is true that the Right Honourable Mr. Mowbray is a Minister of the Crown, but it is also true that the Judge Advocate General of the Bengal Army is my constituted legal adviser, and the legal adviser of Government in affairs military, just as Mr. Mowbray is the adviser of Government and of the Commander in Chief at home.

10. For the ability displayed by the Judge Advocate General, Bengal Army, in the exercise of his office, I would appeal as a witness to Mr. Mowbray himself.

11. I would, therefore, with great submission, suggest to his Royal Highness, that however much his Royal Highness might be induced to differ with me in opinion, and to regret my conduct, it might have been noted in justice to me, that I had sought the best advice placed at my disposal by the Government under which I am serving, with regard to the courts martial and courts of inquiry which preceded it.

12. Having thus stated these general considerations, I would now proceed to show, as briefly as I can, what may in my humble opinion be said against the conclusions of Mr. Mowbray, and the opinion of his Royal Highness.

13. I am not altogether without hope that it will become apparent that much may be reasonably advanced in answer to the argument and opinions which cause me so much pain.

14. In the 5th and 6th paras. of your letter, a quotation from Mr. Mowbray discusses certain legal points. He first gives an opinion on a point which has been much argued, viz., the military character or otherwise of certain duties imposed upon aides-de-camp under my orders. He disagrees with the view taken by me on this matter, but dismisses it as being "immaterial to the question of jurisdiction of the Court on the first charge." With regard to that charge he says, "the charge was essentially a charge of fraud and dishonourable conduct, and was, on this ground, within the legal cognizance of a court-martial," the same opinion having been fully entertained by the Field Marshal Commanding in Chief, *Vide* 4th para.

15. In the 6th para. the Right Honourable the Judge Advocate General records his opinion that the second charge does not disclose any legal offence, for reasons given.

16. I would submit that in those reasons I fail to discover that an important item of the charge has received the attention of the right honourable gentleman. That charge distinctly sets out that the books, vouchers, &c., are the property of the Commander-in-Chief. I am not aware that an officer can on

any

any ground whatever decline to surrender the property of another when it is legally demanded by the owner. If the owner is a lawful commanding officer, it would seem to follow that the retention of the property in spite of formally conveyed orders, does constitute a disobedience, or, in other words, a neglect amounting to a military offence.

17. The charge was carefully framed by the Judge Advocate General, Bengal Army, to avoid arguments as to the definition of lawful command as used in the Mutiny Act and Articles of War.

18. If the charge be referred to, it will be seen that Mr. Jervis is required to produce nothing of his own.

19. It appeared to the Judge Advocate General, Bengal Army, that so much of the charge ending with the words "the property of the Commander in Chief in his (Captain Jervis) possession" was a perfectly valid one. The succeeding sentence "the production of which was essential to the clearance of his character as an officer and a gentleman" was added by the Judge Advocate General, Bengal Army, to strengthen the charge with regard to the obligations held to rest on an officer in his character of a gentleman.

I would ask if the charge is to be invalidated because of the presence of these words.

20. But assuming for the sake of argument that the books and papers concerned were the property of Mr. Jervis, and not of his superior officer, I have learned in conversation with a gentleman learned in the law, that to have rendered the objection valid in the sense of Mr. Mowbray's opinion, the objection, viz., that the production of the books might criminate himself, should have been made when Mr. Jervis was before the court of inquiry. This he did not do. Had he done so, the objection though legally valid would have operated strongly against him in the judgment of the court of inquiry.

21. Having refrained from making his objection at the time, and having, so far as the charge of fraud is concerned, thus saved himself before the court of inquiry, can he be in law entitled to the advantage of both sides of the dilemma in which he was placed, when it might subsequently suit him to plead the objection? The best opinions I can obtain indicate a negative to the question.

22. These observations seem to dispose of the questions of law as stated by the Right Honourable the Judge Advocate General, the paragraphs treating of them being concluded by Mr. Mowbray's opinion that he did not approve of Captain Jervis' conduct in availing himself of a strict legal right (which, for the reasons stated, I venture to think did not exist), that opinion being most forcibly concurred in by his Royal Highness.

23. I may here say that this conduct on the part of Mr. Jervis which is thus strongly condemned, led to the whole unfortunate consequences, there being at the time no reasonable, I might even say no plausible excuse, which I would not have gladly accepted for his extrication from the difficulty in which he was placed. For then there had been no question of trial; Mr. Jervis was not under arrest, and he would not have been placed under arrest if he had not thus absolutely forced it on. The non-production of the books and vouchers left no alternative, according to the Articles of War and the usage of the service.

24. In the 7th, 8th, and 9th paras. his Royal Highness is pleased to discuss the duties incumbent on aides-de-camp as officers. As in duty bound, I most willingly defer to his Royal Highness' superior judgment. I will only say that I have generally found that with young men, written directions are satisfactory to them, for then they know exactly what is expected from them, this rather adding to their free agency than not—a matter always held in view by me as a matter of common courtesy and kindness to them. What might appear peculiar in these instructions was solely induced by my wish to spare no pains to save Mr. Jervis from the results of his temper or eccentricity, whichever it may be termed, and not with regard to any of the other young men about me.

25. I am obliged to say, in justice to myself, that the conviction entertained

by his Royal Highness that a more conciliatory bearing on my part might have saved much that ensued, is hardly borne out by the facts of Mr. Jervis' conduct to me, as shown in the papers attached to the proceedings of the trial, and also forwarded in the " compilation " to the Adjutant General.

26. I venture to say that the truth is, I have been strangely tolerant of bad temper and even rudeness in my house in the instance of Mr. Jervis. When a man has been about for me some time he must go great lengths before he can be dismissed by me, partly from my dislike to change, but principally owing to my wish to help a man as I would a relative when he has once been a member of my personal staff. In point of fact, this annoyance may be said to have been caused by a too great tolerance on my part, when I thought that Mr. Jervis' faults or eccentricities were merely the results of uncertain temper, and that he was a man of ability and good habits of business.

27. After this assertion it will be understood how difficult it would have been for me to have acted as suggested by his Royal Highness in para. 11. To have done so would certainly have been most obnoxious to me, when I found on irrefragable evidence that I had been most grossly duped by a man I had greatly trusted, and that a slur was actually being cast upon my own name by his practices. For it was not a mere mismanagement of household or farm, as supposed in your letter, which caused my indignation, but it was the starting of a shop on my premises for his (Mr. Jervis') purposes, the customers being led to believe that they were conferring favours on me as well as receiving them, I in my ignorance having been included among his customers. Before he had time to elaborate excuses, he admitted the affair quite sufficiently to establish the truth of the testimony on which I was prepared to act.

28. I think it must be admitted that a superior officer labouring under such provocation, with regard to his own dignity and to avoid a painful scene of recrimination between the opposing parties, would be naturally inclined to refer the matter concerned, as I did, for investigation by unbiassed officers. If Mr. Jervis was perfectly clear in the matter, he had merely to explain himself and procure the expulsion of the man who had wronged him. This he would not do.

29. I may here say that it is suggested that I should have done what no colonel of a regiment permits himself to do when an officer misbehaves seriously, more especially when it is an offence against himself.

In the matter of officers it is the invariable custom of the service, for the purpose of avoiding unseemly altercation, pain to the accused, or insult offer superior officer, to cause the accused to be addressed in writing, and to to a him redress, if the matter be serious, by means of organised and perfectly disinterested inquiry.

30. A like principle was followed in the personal examination of my servant. It is true that Mr. Jervis was away in the country at the time, but the most anxious care was displayed to cause the very words uttered in his disfavour to be conveyed to him as soon as possible, as also a memorandum written by myself of the impression thus caused in my mind.

31. In this manner, moreover, was the accuser held absolutely responsible for his accusation, Mr. Jervis being invited to confront him. Thus, without committing me to a painful scene, Mr. Jervis was made aware of the only mode by which my confidence in him could be restored, according to the custom of the service.

32. I assert with entire confidence that these measures were taken with the calmest deliberation, and in the best temper, for the purpose of rendering absolute justice to Mr. Jervis and to others.

33. But the truth is, that the proof thickened so fast against him that the matter, in spite of my precautions, assumed an appearance of precipitation.

34. After this explanation I would express a hope that it may be considered that the insubordinate conduct of Captain Jervis, which is condemned in the strongest terms by his Royal Highness, was the result, not in any manner of my acts, but of his perverseness, which would not allow him to see that if he could clear

clear himself of the allegations laid to his charge, those acts would have been his best assistance. As he could not clear himself, the request for him to do so was naturally disagreeable to him. But that is surely not the fault of the person who has been wronged.

35. Considering the heaviness of the charge brought against me of having been the original cause of Mr. Jervis' insubordination, it is right to illustrate this matter still further.

If in private life, of two gentlemen one commits an act involving the personal honour of the other, and attaching a slur to his own, do they meet to make up the difference, running the risk of violent personal quarrel, or do they manage the investigation through third parties, and ultimately, if necessary through a magistrate?

If to the position be added an element of obligation from an inferior to a superior, there is even less doubt about the course to be pursued and less consideration is shown. If, finally, the further element of military subordination, with the consequence of the obligation on the inferior to do nothing either by word or deed which might bring disrepute on his chief be superadded, the superior officer being bound by the orders and usage of the Army to avoid personal interviews under circumstances which might lead to violent and disrespectful words from the subordinate and therefore to another military offence on his part, we have, I submit, the exact position which absolutely prescribed the course pursued by me.

36. It is to be noted that the treatment of the farm business had nothing whatever to do with the charges on which Mr. Jervis was brought to trial.

37. In answer to paras. 15, 16, and 17, I would beg to refer to my Memorandum dated Agra, 17th November 1866, as also to the papers forwarded to the Adjutant General, in which are displayed the several opinions of the Judge Advocate General of the Bengal Army. As already stated, the latter in my opinion left me no choice, and after prolonged deliberation in which the questions involved were very carefully weighed, as shown in the Memorandum of 17th November I followed the course which on the whole appeared to be the best for the public service, although contrary to my own interests. I could not, of course, accurately foretell the course of public opinion or how it might be worked, but I had been warned, and I felt that I should be the mark of misrepresentation; those who warned me, and myself, alike believing that my official obligations could in no respect be trifled with or slurred over for my personal convenience as Commander in Chief of the Army.

Vide papers forwarded to the Adjutant General.

38. Having thus encountered the criticism respecting my conduct in the matters preliminary to the court martial, I follow the arrangement pursued in your letter, and address myself to the comments on my action affecting the trial itself.

39. I would, in passing, tender my respectful acknowledgments to his Royal Highness for his recognition of the conscientious motives by which my conduct, whether expedient or not, has been actuated.

40. From the 20th to the 27th paras. of the letter under reply, reasons are given for the purpose of supporting the opinion of his Royal Highness, that I should have implicitly followed the finding of the Court, the pith of those reasons being found in the sentence "that it was incumbent on you to be guarded in your course of action, with the special object of shielding yourself from all suspicion of being influenced in the slightest degree by interested or personal motives."

41. The proposition is undeniable, but I would submit that it cannot be taken alone. A Commander in Chief has a higher duty than shielding himself from suspicion of unworthy motives. He is bound to set aside the personal effect of such suspicions, if unhappily, in the exercise of his office, they interfere with the due discharge of his duty.

42. It is the portion of all men in high place at times to undergo such suspicions. It is an obvious, an easy, and a common line of defence for a prisoner to attempt to give form and effect to such suspicions, for the purpose of distracting the attention of a Court before which he may be in the course of appearing, or

before the public; in short, in a manner to cause the accuser to change places with himself.

43. I venture to submit, with the greatest deference, while allowing the utmost possible weight to the proposition above quoted, that had I acted on it solely without paying the most careful attention to the considerations now stated, I should have laid myself open in an unanswerable manner, to the imputation of cowardice and dereliction of duty; and I feel confident that my conduct would have been so viewed by his Royal Highness, and the educated portion of the public.

44. I will now proceed to consider this question in another manner, viz. on its merits, and I shall avail myself chiefly of Mr. Mowbray's own words.

45. In the first place, then, it is to be observed that I was most forcibly advised by the Judge Advocate General, Bengal Army, that a revision of the proceedings of the court martial was necessary, the finding on the first and second charges being distinctly contrary to the evidence which was adduced to the Court before which Mr. Jervis was arraigned.

To the strength of the argument of the Judge Advocate General, Bengal Army, Mr. Mowbray bears testimony.

46. That functionary is my constituted legal adviser, and therefore, technically speaking, it is unnecessary for me to adduce any facts in support of his advice.

47. But, further, I think it is not improper for me to state, that as soon as the case for the prisoner had been fully disclosed by his rejoinder, three gentlemen, learned in the law, who had followed the case from its commencement, expressed to me a strong opinion, in emphatic language, that the evidence for the prosecution was complete, and in no way invalidated by the defence. I will add, that since the proceedings have been known to the public, a variety of opinions from legal authorities, entirely unsolicited by myself, have reached me, both from India and England, absolutely to the same effect.

48. Consequently, reserving any opinion of my own, which was not expressed, I had very strong reason for relying on the soundness of the opinion officially communicated to me by the Judge Advocate General, Bengal Army.

49. I was also informed by official report, that the Court had been much divided, a majority of nine having voted for acquittal, against a minority of six on the first charge, and of eight against seven on the second.

Vide letter of Judge Advocate General, Bengal Army, ordering revision.

50. It was thus evident that revision could not be avoided. The order was accordingly given, while I carefully guarded myself from uttering even a hint of personal opinion.

51. The Court adhered to its finding. I do not in the least contest the soundness of Mr. Mowbray's sentiments, as expressed in the long quotation set out in your 28th para. I am aware that in some cases it may, and that it does happen, that notwithstanding the entirely technical completeness of evidence, a Court exercises a proper discretion in acquitting a prisoner.

52. In this particular case, as shown by the official advice which I had peculiar reasons for thinking sound, I could not but entertain the strongest doubts of the correctness of a verdict which was carried by nine members out of 15.

53. The Court evidently laboured under the very difficulties which are apparent in the mind of the Right Honourable the Judge Advocate General, whose words I now set out.

Note.—This opinion would seem to establish the absolute necessity of bringing this case to trial. It is thus further evident that this business was of such gravity that it could not be affected by the personal bearing of the Commander in Chief, it being one which could alone be decided in a Court of Justice.

"The evidence as it appears to me, admitted reasonably of a conclusion either of the prisoner's guilt or innocence;" and again, "the Court deliberately found in favour of the prisoner, and I do not feel myself justified in saying the finding was wrong.

"I think it right to add, that I have confined myself to reviewing the case as it was presented to the Court upon trial."

54. It is thus evident from the guarded language of Mr. Mowbray that, while he does not feel himself justified in saying the finding was wrong, he does experience considerable doubt about the matter.

55. The

55. The concluding sentence, quoted from Mr. Mowbray's opinion, must now be taken into consideration. It is of great importance.

56. It so happens that Mr. Jervis' conduct since the trial affords an opportunity of applying a crucial test for ascertaining whether the penetration and insight of the court martial were sufficient, and as to whether the advice given by the Judge Advocate General, Bengal Army, on which I have acted, was correct or not.

57. This test is found in the printed correspondence which I attach to this letter, the same having passed on the subject of Mr. Jervis' accounts before and after the trial. It is brought down to the latest date, since when Mr. Jervis has quitted India.

For the sake of brevity I attach also a memorandum originally compiled by my advisers for private circulation among my friends. This will more especially elucidate the matter of the correspondence.

58. I submit these papers without comment, beyond the remark, that in my opinion, and as I believe in that of all others who have seen them, they incontestably prove that the estimate of the evidence as taken by the Judge Advocate General, Bengal Army, was not only technically but absolutely and practically correct, and that, as we almost invariably find, a careful attention to the law of evidence has saved him from an error into which the majority of the Court was led by the ability with which Mr. Jervis' defence was conducted.

59. I venture to solicit the great favour of a personal perusal of these papers on the part of his Royal Highness.

60. It is thus I think firmly established, that the doubts entertained by Mr. Mowbray as shown by his own words are justified, and that the official legal opinion on which I have acted has been sound. I am particular in saying "the official legal opinion on which I have acted," because both in the revision of the Court and in my remarks on the trial, I have sedulously refrained from uttering or even hinting any personal opinion. This I conceived to be required from me by the circumstances of the case.

61. Although up to this point I have assigned reasons to his Royal Highness for adopting the opinion of the Judge Advocate General, Bengal Army, that the finding of the Court on the charge of scandalous conduct was contrary to evidence, I must guard myself against misconstruction by affirming in the most emphatic and positive manner, that I did not believe that the recommendation to mercy could be attended to, even though the acquittal of the Court were justified by the facts adduced before it.

62. With respect to my remarks on the court martial, I must express my deep regret that they have not the approval of his Royal Highness.

63. While bowing to the superior judgment and wide experience of his Royal Highness, I may perhaps be permitted to observe that it would be impossible to find in the annals of Her Majesty's Service, any instance of repeated, prolonged, violent, and most deliberate insubordination on the part of a private soldier being admitted to mercy on the ground of alleged provocation. An isolated act of insubordination or violence may be and is so treated, and by no one more often than by myself, whether with or without the recommendation of a Court. But I venture to think, and to state with some approach to confidence, that prolonged insubordination which is deliberate and aforethought is, according to the custom of Her Majesty's Service, never so treated, whether in the case of commissioned officers or of private soldiers in the ranks.

At least such treatment is contrary to my experience and that of my advisers, and to the testimony given by the records of cases in the law books and the archives of the Judge Advocate General's Department.

64. It has been a frequent custom in India for the Commander in Chief to give his reasons for disapproval of a verdict when confirming the proceedings of a court martial after revision. This has been generally done by the most eminent of my predecessors. Considering the unlearned character of courts martial, the custom has been held to be necessary, and it has never, so far as I am aware, been declared to interfere with the independence of courts martial.

When such remarks are uttered, judgment has been passed, the Court has been dispersed, and it is out of the power of the revising officer to interfere either with verdict or sentence, except in mitigation or commutation of the latter according to law.

I have constantly conformed to the custom myself.

65. During the time occupied by Mr. Jervis' trial, I twice so acted in the case of officers.

Ensign ————th Foot, was cashiered and recommended to mercy. I carried out the sentence, giving reasons for setting aside the recommendation to mercy. During the same time Major ———— was brought to trial for scandalous conduct. The verdict being, as I was advised and believed, contrary to the evidence, the Court was ordered to reconsider its verdict. The verdict of acquittal having been adhered to by the Court, my opinion of the error thus committed was published in General Orders.

In the case of private soldiers when arraigned before general courts martial, the like occurs.

66. Such being the custom, even-handed justice would seem to demand that what is practised to all others should not have been overlooked in the case of Mr. Jervis, merely because of my personal relations to that officer.

67. As stated briefly in the remarks, I deny the existence of the so-called extenuating circumstances. The reasons for the same were fully shown in my memorandum of 17th November, and in the early paragraphs of this letter as well as in my letter to the Adjutant General of 21st September 1866.

68. It can hardly be said that the accident of grave offences of insubordination having been committed against the Commander in Chief in person is a reason for the latter to forget his duty of maintaining the discipline of the army according to law and usage, when the conduct of the accused person has compelled the Commander in Chief to the last resource of a public trial.

69. My view has been, on the contrary, that it was for the Commander in Chief simply to elevate himself above the whole matter, as if he were not a party concerned, and to treat it as it would have been treated in the case of any other superior officer who had been insulted and met with the grossest insubordination by one under his immediate command, it being recollected that the protection of his office on the part of the Commander in Chief is a positive obligation on him.

70. This was evidently the view of the late Marquis of Hastings, who when Commander in Chief in India acted on such principles and in a manner similar to mine, but with a more pronounced action when he was insulted by an officer under his command.*

* *Vide* case of Lieut. Colonel ——, who was tried by general court martial, at Bombay, on 1st October 1852, by order of the most noble the Commander in Chief in India.

The case was peculiarly personal to the Marquis of Hastings.† This did not prevent his Lordship from protecting his office, and from uttering a severe reprimand to the court martial for neglecting to award a sufficient punishment.‡

† *Vide* all the charges, but especially the third charge, and Lord Hastings' remarks on the trial.

‡ *Vide* Hough's Courts Martial, edition 1825, pp. 67 and 68.

His late lamented Majesty King George the IVth confirmed the action of the Marquis of Hastings in most impressive remarks, which were published under the orders of His Royal Highness the Duke of York.§

§ *Vide* Hough's Precedents in Military Law, p. 129, edition of 1855.

71. Again, if we turn to Hough's Precedents,‖ we find remarkable rules and precedents for the guidance of courts martial in the sense of the decision of the Marquis of Hastings and his late Majesty.

‖ Page 125.

I would especially solicit the gracious notice of his Royal Highness to those precedents and rules which apply in an exact and forcible manner to the conduct pursued towards me as Commander in Chief in India by Mr. Jervis, as duly reported and established by most sufficient documentary evidence. ¶

¶ *Vide* my letter to the Adjutant General of the forces, dated 21st September 1866, No. 389, and Captain Jervis's letter to the Adjutant General, Bengal, dated 10th September 1866.

72. It is thus apparent that if I have acted injudiciously I have at least not acted without the weight of great authority and precedent on my side in the application of general and most important principles to the particular case.

73. For

73. For the purpose of completing the argument in support of my view that I was bound by law and reason to exercise an independent discretion with regard to the approval of the proceedings of the Court, I would ask leave to put the converse of the case which has actually happened.

Suppose that an officer in whom I was greatly interested, that interest being patent to the world, had been found guilty in the face of strong evidence of innocence, and as a consequence subjected to severe and unmerited punishment. Suppose further that the Court on revision adhered to the unjust verdict. Should I, because of my personal interest in the officer concerned, allow him to be led out to the severest punishment, perhaps to death, in the face of an unalterable conviction of his innocence according to the evidence on record?

It appears to me that friendship or relationship in such circumstances would be the means of the most crying injustice, to be tolerated neither by law, common sense, nor public feeling. Yet if the infallibility of a court martial is to be officially admitted as a necessity by a Commander in Chief in such a case as that with which I have had to deal, I fail to see how the rule can be avoided in the hypothetical case just stated.

74. With regard to the matter contained in your 32nd paragraph, in which the recommendation to mercy is balanced against the absence of "full and honourable" acquittal of the prisoner, it is my duty now to place on record a fact with which I have long been acquainted.

75. It was through no accidental omission that the court martial which tried Mr. Jervis, recorded a simple acquittal on the first charge. It was reported orally by the Deputy Judge Advocate General, who conducted the proceedings, to the Judge Advocate General, Bengal Army, that some members did actually propose the addition of the words "fully and honourably" to the acquittal.

This proposal was, however, summarily put aside by the Court, and not even put to the vote.

I was acquainted with this fact when I forwarded the finding and sentence of the Court to you, for the information of his Royal Highness, but it has only now become necessary, in justice to myself, and in answer to your argument, to place it on record.

76. The special importance of it is the more marked if it be recollected that in the course of his defence and rejoinder, the prisoner appealed in the most emphatic manner to the Court, to the effect that if a full and honourable acquittal were not recorded in his favour, he would be branded in society. He fully accepted the alternative that the absence of full and honourable acquittal was tantamount to conviction.

77. In your 33rd and 34th paragraphs you indicate that as I was unable to concur with the Court and to act on their recommendation, I should have altogether refrained from dealing with the case, and that I should have forwarded the proceedings to England for submission to the Queen to be disposed of according to Her Majesty's pleasure.

It is further said that this course would have relieved me from all responsibility, and would have extricated me from a most anomalous and exceptional position.

78. In answer I have to submit, with great deference, that this course did not escape my consideration, but that I did not feel myself justified in evading my due responsibility according to my warrant, and the commission I hold as Commander in Chief in India.

79. It did not occur to me that in the application of the principles I have acted on and have above elucidated by reference to authority, there could be any possible difference of opinion with respect to the non-admission of the recommendation to mercy.

80. I advisedly thought, this being my conviction, that it would be pusillanimous in me to shrink from the performance of a painful duty, and by a most unusual course to devolve the responsibility of it on his Royal Highness, it having been assumed by me that the decision of Her Most Gracious Majesty would be guided by the recommendation of his Royal Highness.

81. I was myself the mark of a great, but I trust an unmerited and passing obloquy for the performance of an odious duty, the obligations of which were, according

according to my view, such as I could not escape from. I therefore deliberately elected to stand the brunt of the public outcry, whether my views might be right or wrong, rather than in any manner devolve responsibility on my superiors.

82. His Royal Highness will, I feel confident, do me the justice to recollect that this is by no means the first time on which I have grappled with my responsibilities in the face of an adverse public opinion, and that on a memorable occasion my action and opinions were finally justified after I had suffered from the censure of Government and the dissatisfaction of the public. On that occasion my object was identical with that I have had before me now, the maintenance of the honour and discipline of the army under my command.

83. With respect to the case of Captain ————————, quoted by you in the 34th paragraph, I am led to believe that Lord Strathnairn forwarded it to England contrary to his usual custom, not owing to a disagreement with the court-martial which tried Captain ————————, but because his Lordship desired the commutation of a sentence of cashiering, the power for which is not vested in the Commander in Chief in India, when he thought that the offence should not pass altogether without punishment.

84. With respect to the remark in your final paragraphs on the sound judgment and impartiality of the Court which tried Mr. Jervis, it is not for me to offer any comments on the opinions of his Royal Highness and the Right Honourable the Judge Advocate General.

85. I purpose to address you in a separate communication by this mail, conveying a request for a further order from his Royal Highness before I give execution to that conveyed in the 37th paragraph.

86. In bringing this long argument to a conclusion, I trust his Royal Highness will give me credit for being actuated by no vain spirit of controversy, but by the desire of placing what I believe to be sound and truthful views in the most respectful manner before him, and so to vindicate myself from the serious errors of judgment laid to my charge.

87. I have the honour to request that my memorandum of 17th November 1866, may be read with this letter. I attach a copy for more easy reference.

I have, &c.
(signed) *W. R. Mansfield*, General,
Commander in Chief in India.

(No. 21 c.)

COURTS MARTIAL.

From His Excellency General Sir *W. R. Mansfield*, Commander in Chief in India to the Adjutant General of the Forces, Horse Guards, London.

My Lord, Head Quarters, Calcutta, 22 February 1867.

I HAVE the honour to acknowledge the letter from the Right Honourable the Judge Advocate General, dated 4th January 1867, transmitted with your Lordship's communication of the 18th January.

The Right Honourable Mr. Mowbray's letter has reference to, but only partially meets, the five questions on which I solicited his legal opinion in my letter No. 2 c, dated 22nd November 1866, and as his letter, if not met, seems to me calculated to prejudice me seriously, his Royal Highness will, I trust, hold me excused for submitting a reply to it.

I would respectfully submit, in the first place, that the learned gentleman's opinion, as given in his 3rd paragraph, bears upon a point not referred to him by me. At the same time I may express my satisfaction at finding that, although unable to concur in some of my reasons for bringing Mr. Jervis before a military court, Mr. Mowbray admits the force of other reasons adduced.

In

In his 4th paragraph, the Right honourable the Judge Advocate General, while he gives no reply on the abstract point referred, states his opinion that the 100th (now 101st) section of the Mutiny Act "had no application to the first charge against Captain Jervis."

The question turns on the technical distinction between felony and misdemeanor. On a point like this, not properly making part of military law or usage, I have been justified, I conceive, in relying on the opinion of my constituted legal adviser, and I will only say that, after being again consulted by me, he adheres to his view that certain of the facts alleged against Captain Jervis would, if proved, and if innocent intention were not shown, constitute an offence contemplated in section 101 of the Mutiny Act. I may add, however, that, if this view be erroneous, there are special reasons why the error is pardonable in India. The Right honourable the Judge Advocate General is doubtless aware that, though the distinction between felony and misdemeanor is the test of amenability under the above section, the law under which the accused person is actually tried is the Indian Penal Code, which (with the general approval, as I am informed, of jurists) neglects these technical distinctions of English law, which have no existence in the nature of the offences discriminated.

In his 5th paragraph the Right honourable Mr. Mowbray replies to my question as to the position of a general officer, who, being interested in a case and also a witness, brings the accused person to a court martial.

The Right honourable gentleman's remarks on this subject are so worded as to convey, though doubtless unintentionally, a personal attack on myself; and I am, therefore, constrained to meet them, though very far from wishing to enter upon any controversy on the subject.

I venture still to maintain "that a general officer in command who relegates a case in which he is concerned to the decision of a court martial places the accused and himself on a footing of equality with a view to the furtherance of the interests of justice."

This abstract opinion may be illustrated by a reference to the case of Mr. Jervis.

The Right honourable the Judge Advocate General has elsewhere recorded his opinion that the court martial displayed "marked impartiality." There was, therefore, no leaning on the Court's part towards the general officer who ordered the trial, and his Royal Highness is now aware that if any bias whatever is to be suspected, it was against rather than for the convening authority.

Again, acting under legal advice, and in opposition to his own personal wishes, the general officer ordered the court martial to revise its finding of acquittal. The Court nevertheless adhered to its finding; and thenceforward the power of the general officer to influence the Court, if it ever existed at all, absolutely ceased.

I respectfully urge that, until the proceedings of a trial are closed, the officer who orders it is in reality a prosecutor, whether personally interested or not.

The procedure of courts martial, unlike that of ordinary courts, permits the prosecution to be pressed after the verdict has been recorded; and the arguments submitted by a revising officer are nothing more or less than a continuation of the case for the prosecution.

It does not, therefore, appear to me that the convening and revising officer can be considered in the light of "a judge presiding at an ordinary criminal trial by jury," and still less can he be so considered in the matter of sentence, which, at a criminal trial, is delivered by the judge, but at a military trial rests with the Court alone.

After sentence, the revising officer, being then in a different position can, in his capacity of command, carry out, mitigate, or remit a sentence, though he can in no case add to or alter it, and his disposal of the sentence is quite as often influenced by reasons of general expediency, as by the features of the case itself.

Thus, the character of a prisoner, the necessity of example, the general conduct of the troops, and many other considerations, all have their weight and influence with a general in command, when he is called upon to dispose of a court martial sentence.

I venture to submit for his Royal Highness's consideration that the doctrine, which the Right honourable Mr. Mowbray would seem to lay down, is, if sound, susceptible of a very wide and unusual application; for if a general officer, as such, is precluded from prosecuting and pressing charges of scanda-

lous conduct and gross insubordination, because himself their object, he would also be precluded from all action in case of more direct and palpable offences against himself.

The views expressed in the Right honourable the Judge Advocate General's 6th paragraph are matter of opinion only, on a subject upon which, as he himself shows, various opinions are held. I would only mention that there are few points on which confirming authorities have been so much at variance with courts martial as on that of "Recommendations to Mercy," by which the onus of apparent severity is thrown upon the confirming authority when courts martial shrink from the full performance of a painful duty.

I have the honour to annex a list of some of the cases in point which occur to me.

It is a matter of extreme regret to me that the Right honourable the Judge Advocate General did not consider my last two questions to be "properly legal questions," and that I should thus lose the advantage of his opinion on them.

His Royal Highness is fully aware that when we pass beyond the rank of private soldier, a great proportion of courts martial rest upon neglects in the proper enforcement of the Articles of War and regulations of the Service.

My inquiry was, whether a Commander in Chief is not himself bound to follow the same course in the case of offenders as he compels others to follow; and whether he can permit an officer to rejoin his regiment while under the unremoved stigma of fraud and insubordination.

I would venture to state my opinion that such a matter cannot properly be judged only by the special circumstances of a particular case, or with regard to individual convenience; but that the only general rule which can be laid down with regard to a Commander in Chief is that he is bound, like any other commanding officer, to deal with both the fraud and the insubordination (*see* the 18th, 38th, 75th, and 79th Articles of War, as applying to Mr. Jervis' case).

The 18th and 79th Articles taken in conjunction appear to remove part of Mr. Jervis' case beyond the option of the Commander in Chief.

I would, therefore, submit that the true view of the duty of a Commander in Chief, when placed under the circumstances in which I found myself, is that he must regard himself as absolutely bound, unless in the most exceptional cases, to compel an inculpated officer to clear his character. I admit, though with the utmost misgiving, that there may be such exceptional cases; but I venture to deny that they should be kept in view in any general definition of a Commander in Chief's duty; and I think it most dangerous to lay down that his course is to be guided in each instance by a "consideration of the particular circumstances."

I requested the opinion of the Right honourable the Judge Advocate General on the general rule, which I thought it just to myself to have ascertained, because, until it is clearly stated, it is impossible to apportion the degree of blame which attaches to a Commander in Chief, for omitting, in a particular case, to depart from it.

The Right honourable gentleman has however apparently, as in a former instance which I have noticed, laid down a rule intended to apply to the case of Mr. Jervis, rather than meant to be of general application. I understand him to imply that I should have "considered the particular circumstances" of the charge against Mr. Jervis; for the reason I have given, I think it unfair to put forward this proposition, either directly or indirectly, until the general rule has been laid down; but I am willing to discuss the error, which I cannot doubt is imputed to me, of not having, under the particular circumstances of the Jervis case, pursued a special and exceptional course.

I admit that if I could have foreseen all that has followed the step of putting the ordinary machinery of military courts in motion for the purpose of eliciting an explanation of Mr. Jervis' conduct; if I could have foretold the extraordinary lengths to which he would proceed, the extraordinary character of his defence, the mode in which it would be conducted, the success with which the Indian press would be worked to my disadvantage, the extent to which it would be echoed by the English press, and the unfavourable impression of my acts which would be produced, I will not say on Indian public opinion, which is always at the disposal of anybody who will attack authority; but on English public opinion, which, though I have been little in England, I have always supposed

supposed to be juster and fairer; I might have thought a case had arisen where my duty of protecting the honour and the morality of the army might for once excusably be put aside; but I should have come to this conclusion with the greatest hesitation, and with extreme doubt whether I was not sacrificing the interests committed to my charge to a cowardly fear of personal annoyance.

But I venture to affirm with some confidence that the true question is whether any such foresight as I have described could reasonably be expected from me. Before I am censured, the person who censures me should be able to place himself in the exact position in which I stood. Now, when the facts, which were ultimately alleged as the first charge of scandalous conduct against Captain Jervis, were first disclosed, they appeared to me and to all about me to constitute, until they were explained, as simple a case of fraud as had ever come before us. The alternative of calling on an officer in the recognised mode to clear his character, or of allowing him to rejoin his regiment with stained character, presented itself in the simplest form.

I submit that the only questions which I and my advisers could be expected to ask ourselves were these: Were the facts brought to light capable of ready proof? If they were proved, did they, till explained, amount to scandalous conduct in an officer? Was there any such simple explanation of them as we were bound to reach by conjecture, and thus to entertain doubts of their *primâ facie* interpretation?

On the first point I must observe, that the facts were not only proved, but admitted by Mr. Jervis throughout his trial.

On the second, I conceive that nobody will deny, and I understand the Right honourable Mr. Mowbray to allow, that, till explained away, they did constitute scandalous conduct.

On the third, I must beg to appeal to the Right honourable the Judge Advocate General himself. I am sure that he has sifted Mr. Jervis' defence with the utmost care; that he has observed that, where it does not consist of counter accusation, it consists wholly of explanation; that he has noticed that Mr. Jervis in making his defence, had not only the usual advantage possessed by every prisoner tried before a military court, and assisted by counsel, of laying before his judges in the form of a personal statement and appeal, what is really a dexterous and carefully arranged legal argument, but that Mr. Jervis had also the unusual advantage of combating the reasoning adduced against him in a rejoinder of extraordinary length; yet the ultimate result at which the Right honourable Mr. Mowbray has arrived is, that the arguments for and against Mr. Jervis' guilt are evenly balanced. Whether they really are so balanced is a point on which it would not be proper for me to enter on controversy; but I submit that I could not possibly have been expected to divine beforehand the explanation which, presented with every advantage, has produced so ambiguous an impression on Mr. Mowbray's mind. I could not have foreseen that I, who always supposed myself to be surrounded by men of honour, should be told that a custom of misappropriating my property on a vast scale had always existed in my household; and I could not have foretold a series of positive assertions, that I was in my aide-de-camp's debt, when in fact I knew that I was not, and had never been, indebted to him.

I trust that you will assure his Royal Highness that I have written this letter in no spirit of controversy or complaint, but solely from a desire to guard myself from further misconstruction.

I beg you to lay it before his Royal Highness with the greatest respect and deference on my part, and that it may be read in continuation of my letter to the Military Secretary of 19th February 1867, which is despatched by the same mail.

I have, &c.
(signed) *W. R. Mansfield*, General,
Commander in Chief in India.

To the Adjutant General of the Forces,
Horse Guards, London.

CORRESPONDENCE relating to the Non-Settlement of the Accounts kept by Captain *Jervis* in Sir *William Mansfield's* behalf.

From Captain *Scott Jervis* to Sir *William Mansfield*; dated 20 April 1866.

All the books are complete to date. At any time that you would wish to go over them I shall be happy to attend you for the purpose. The general statement of accounts you have seen to a recent date. The other shall be completed, and shown to you very shortly.

There is full work for one clerk in the establishment. I would gladly learn from you that one had been told off for the duty. I could not hold out a hope that Abbey will be able to continue to act as clerk as well as do his other work. Attention to the one can only be given by neglecting the other.

The books, which you can see at a moment's notice, will convince you that everything is right.

As shown by the court-martial, Mr. Jervis had been in vain importuned for his accounts from May 1st to 14th. After that date Mr. Jervis, being under arrest, was ordered to submit them for audit by a confidential committee, which he finally declined to do on May 22nd, this absolute refusal having led to his court-martial.

From Captain *Scott Jervis*, 106th Light Infantry, to the Adjutant General of the Army; dated Simla, 10th September 1866.

I have the honour to request you will do me the favour to submit the following statement for the consideration of his Excellency the Commander in Chief.

When, in the beginning of May last, the accumulation of charges preferred against me by his Excellency had distressed and completely overwhelmed me, I brought against his Excellency, in the civil court, two suits; one for the recovery of the balance I considered due to me on account of the house I was building for his Excellency; the other for the balance due to me on the house-expense account. These suits are now pending in the civil court.

I will not enter into the reasons which prompted me at the time to institute those suits; I will only say that, whether right or otherwise, I believed then, and I conscientiously believe still, that the amount for which I sued was really due to me; but that I was at the time, and have been since, under the influence of an excitement which may, perhaps, on a consideration of all the circumstances of the case, be understood.

The court-martial, which was the consequence of the events of May last, now, however, is over; the events which occurred subsequently, and for which I have expressed my contrition, have led me to reflect upon the whole proceedings of the case, and I have been brought to the conclusion that my conduct in instituting civil suits against the Commander in Chief of the Army was, at least, unmilitary and improper. It is not, perhaps, too late now to make the only amends in my power.

In that view, I beg you will do me the favour to inform his Excellency of my intention to withdraw the two suits in question, and to leave their settlement unreservedly to his Excellency's sense of what is fitting and correct.

Similarly, I beg you will inform his Excellency of my intention to withdraw the suit I have instituted against his Excellency for libel, and to express my regret for having entered it.

In making this communication I have only, in addition, to express an earnest hope that my motives in submitting it may not be misunderstood. They are simply what I have stated them to be, the conviction now forced upon me that it was wrong and unmilitary on my part, no matter what might have been my idea of the treatment I had received, to institute civil suits against the Commander in Chief. I may perhaps be permitted to add that my feelings were wrought up to a pitch at which I could not control them, by the idea that his Excellency, to whom

whom I had devoted myself entirely for so long a period, and whose every interest I had regarded pre-eminently as my own, should have considered me guilty of the offences charged against me. On the charges so preferred I have been brought to a court-martial. To the finding of that court I must submit. But whatever it may be, I beg permission to assure his Excellency that the accumulation of charges utterly overwhelmed me, and that the revolting nature of the principal charge, which I again solemnly declare to have had no foundation whatever, alone drove me to the course of resistance which I adopted.

With respect to the military charges, I trust it may not be considered an impropriety if I take this opportunity of expressing my regret that I should have comported myself in any other way than as a soldier owing military obedience to competent authority.

I take this opportunity, likewise, of expressing my regret for, and retractation of, any reflections or imputations which might have been considered to have been made or implied against his Excellency in the course of this trial.

In conclusion, I will only express a hope that this acknowledgment of the errors I have, under an excitement which was perhaps natural, committed, and my atonement, the only one in my power, which I have made, may be as satisfactory to his Exellency to receive as it is to me to make it.

From Colonel *H. E. Longden*, Adjutant General, to Captain *E. S. Jervis*, Her Majesty's 106th Light Infantry; dated Head Quarters, Simla, 13 September 1866.

COURTS-MARTIAL.

I AM desired by the Commander in Chief to acknowledge your letter of 10th September 1866.

2. In that communication you intimate that you have become aware that your recent conduct in laying suits against his Excellency in the civil courts has been unmilitary and improper.

2ndly.—That you withdraw those suits.

3rdly.—That you regret, and retract, all imputations recently cast on his Excellency by you.

3. Notwithstanding the great provocation given to the Commander in Chief in the matters above referred to, I am desired to express his Excellency's satisfaction that this tardy avowal of error in the several particulars should have come voluntarily from you.

4. There are certain passages in your letter which demand notice.

5. Thus you would seem to imply that his Excellency had hastily yielded to *ex parte* representations without due investigation, before the formal inquiry was ordered regarding the alleged misappropriation.

6. I am to take the present opportunity of re-stating this part of the case.

7. Certain allegations, supported by documentary evidence, and what in law are held to be very strong presumptions against an accused person, were urged against you.

8. You were earnestly desired to clear yourself in the only manner possible according to military regulation and custom, without doing which you could not possibly have entered one of Her Majesty's regiments.

9. In this matter the official responsibility of the Commander in Chief was directly involved. When scandalous or criminal matter is alleged against any officer in the army, the Commander in Chief, with regard to the action he is bound to pursue, as must be well known to you, is without choice. Consequently, until the allegations might be successfully explained or removed, it was simply out of his Excellency's power to treat you otherwise than as an accused person.

His Excellency devised the expedient of the confidential Committee of Audit, in the earnest hope of extricating you from your difficulties, with due regard to the morality and honour of the army of which he is the guardian.

10. It is necessary to add that, as shown by the dates of certain occurrences prior to the assembly of the first court of inquiry, you had already committed yourself to open resistance to military authority. This occurred many days before the matter of misappropriation had been in any manner alleged against you, in fact, before the circumstances demanding explanation under this head had been discovered.

11. Even to the last, his Excellency would have been willing to accept a proper military offer from you to extricate yourself from the charge of misappropriation according to such means as had been already proposed.

12. His Excellency has ever most sincerely deplored that such an offer did not come from you.

13. In the mean time the fatal measure of filing the civil suits had been executed.

14. His Excellency could then only believe that an attack was being advisedly made on the due exercise of military authority by means of a struggle in the civil courts. The Commander in Chief, being charged with the duty of maintaining that authority, was thus compelled to review this attack in his official capacity, and more specially with regard to the manner in which it might be intended to bear on the military inquiry he had been compelled to order.

15. This consideration was not at all weakened by the fact that his Excellency has known all along that the several matters of the three suits filed against him presented no ground of action, which could cause a passing feeling of uncertainty in his mind, his belief having been fortified by the opinions of the eminent legal advisers consulted by his Excellency.

16. The Commander in Chief now accepts the entirely voluntary withdrawal of these suits in the sense proposed in your letter, while he expresses his deep regret that you should have been advised to a course fraught with so much injury to yourself.

17. His Excellency is glad for your sake that you now desire to leave the unreserved settlement of the money claims to him. Measures will be immediately taken to have this settlement of accounts, according to such data as may be available. If without his knowledge your late management has ended in indebtedness to you on his Excellency's household accounts, this will be ascertained at once, as it ought to have been long ago, by means of the Committee of Audit, the intervention of which was rejected by you. I am to observe, however, that according to his previous impressions, and the facts lately collected, his Excellency is unable to conceive that any such indebtedness can possibly exist.

18. With regard to the house-building claim, the withdrawal of the civil suits rendered that easy which was precluded by a hostile action at law. Your old experience must convince you that it would have been odious to his Excellency to have allowed you to have incurred any charges on his account, notwithstanding that the legal obligation of a contract might be against you as shown by documentary proof in one of your suits. Accordingly, so soon as his advisers are in a position to declare a settlement of the account, you will have the full benefit of this feeling on his Excellency's part.

In re the Withdrawn Money Suits of *Jervis* v. Sir *William Mansfield.*

From *G. Plowden*, Esq., Counsel for Sir *William Mansfield*, to *William Tayler*, Esq., &c. &c. (dated Simla, 26th September 1866).

I SEND herewith the account sheets of Sir William Mansfield's household expenditure under the management of Captain Jervis, from September 1865 to April 1866 (both inclusive), made out by Major Gordon, A.D.C., from the several house books and other papers in the possession of Sir William Mansfield.

The payments made to Captain Jervis, entered in the Abstract Statement under the head of "Receipts," are derived from Sir William Mansfield's cheque book. The disbursements made by Captain Jervis, under the head of "Expenditure,"

penditure," have been adopted in the case of every item, precisely as exhibited in the books and papers kept, or attested, by Captain Jervis.

It remains for Captain Jervis—

1st. To produce the bills and receipts, supporting the several items of disbursement marked with a blue pencil cross.

2nd. To add in each month's sheet any disbursements made by him which do not appear in the books and papers in the possession of Sir William Mansfield, supporting them by the necessary vouchers.

3rd. To fill in, under the head of "Receipts," in the Abstract Statement, the value of any wines, or stores, and stable equipments, belonging to Sir William Mansfield appropriated to his own use, and the amount of his own travelling expenses, charged to Sir William Mansfield.

4th. To fill in, under the head of "Expenditure," in the Abstract Statement, the balance of actually disbursed sums due to him on the building account.

If Captain Jervis desires to see the books and papers from which the monthly sheets of expenditure have been prepared, and the cheque books from which the cheques paid to him have been derived, they can be transmitted to you.

As what is required from Captain Jervis can obviously be supplied in a few hours, I trust to receive back the sheets from you, duly completed, as proposed, in a day or two, in order that the account between the parties may be finally settled without any further delay.

As I am leaving Simla for Court business at Kussowlie, please to return the sheet, when completed, to Major Gordon, and any letters that you may find it necessary to address to me in this matter, please to forward through Major Gordon.

P. S.—Major Gordon's letter to me accompanies the account sheets.

From *W. Tayler*, Esq., Counsel for Captain *Jervis*, to *G. Plowden*, Esq., Counsel for Sir *William Mansfield*; dated Kennedy House, Saturday, 29th September 1866.

In reply to your letter of the 26th instant, I am instructed by Captain Jervis to say, that he is not inclined, at the present crisis, to enter into the question of accounts between himself and Sir William Mansfield.

It is indeed a matter of extreme surprise to Captain Jervis, that the books and papers have not all been sent by last mail to His Royal Highness the Duke of Cambridge; all these documents are connected more or less with important questions which arose and were discussed during the proceedings of the court martial, and it will be impossible for His Royal Highness to form a proper judgment in the case unless they are before him.

After the close of the proceedings in England, Captain Jervis will be happy to aid you in the completion of the accounts, by supplying any information that may be required.

In re the Withdrawn Money Suits of *Jervis* v. Sir *William Mansfield.*

From *G. Plowden*, Esq., Counsel for Sir *William Mansfield*, to *William Tayler*, Esq., &c., &c.; Dated Kussowlie, 12 October 1866.

I duly received, on the 3rd instant, yours of the 29th ultimo, replying to mine of the 26th idem. Illness has prevented me from noticing it earlier.

2. It seems necessary, first, to remind you, that Mr. Jervis, in his letter to the Adjutant General of the Army, dated the 10th ultimo, expressed his "intention to withdraw the two suits* in question, and to leave their settlement unreservedly to his Excellency's sense of what is fitting and correct," and that the Adjutant General, in his reply, dated the 13th ultimo, stated, among other remarks upon this intention, that measures would be "immediately taken to have this settlement of accounts, according to such data as might be available."

3. Accordingly, the said money suits having been formally withdrawn by Mr. Jervis, on the 15th ultimo, the account sheets of Sir William Mansfield's household expenditure, from September 1865 to April 1866 (both inclusive), were immediately made out by Major Gordon,† from the several house books and other papers in Sir William Mansfield's possession, in the manner described in my letter of the 26th ultimo, and they were transmitted to you for the purposes indicated in that letter.

4. It is obvious that any corrections or additions Mr. Jervis was able to make, might have been done in a few hours, and that, so, the accounts between the parties might have been finally settled within two days from the receipt of my letter.

5. But, instead of assisting the settlement left by himself unreservedly to Sir William Mansfield, Mr. Jervis, you inform me, now says, that "he is not inclined, at the present crisis, to enter into the question of accounts between himself and Sir William Mansfield;" and you conclude your letter by saying, that after the close of the proceedings in England, Captain Jervis will be happy to aid me in the completion of the accounts, by supplying any information that may be required.

6. The reason assigned for this indefinite postponement of any settlement on Mr. Jervis' part is, that "the books and papers have not all been sent by last mail to His Royal Highness the Duke of Cambridge." This has excited Mr. Jervis' "extreme surprise," inasmuch as "all these ‡ documents," he says, "are connected more or less with important questions which arose, and were discussed during the proceedings of the Court Martial, and it will be impossible for His Royal Highness to form a proper judgment in the case, unless they are before him." Without entering into the correctness or merits of this objection, so far as it concerns the court-martial case, it is sufficient to observe, that it is transparently beside the question of a settlement of the accounts between the parties. Thus it would be a waste of words to notice it, further than to point out that the transmission of the books and papers to England might, with some show of plausibility, have been pleaded as an excuse for postponing a settlement, but that the fact that the books and papers are at hand and available, should be made a handle for declining to enter into the question of accounts until the proceedings of the court-martial are closed in England, is quite incomprehensible. This is seen with absolute clearness, when it is added, that these said proceedings disclose nothing in connection with the accounts, except Mr. Jervis' admission that he appropriated to his own use the stores belonging to Sir William Mansfield, specified in the court-martial charges, and now therefore proposed to be debited against him in the accounts. There is, besides, the fact that Mr. Jervis made no attempt, by evidence of any kind, documentary or oral, to prove his allegations of Sir William Mansfield's indebtedness to him. It is then quite obvious, that there is nothing to hinder an immediate settlement of the accounts, and that nothing

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* Meaning suits on account of money claims.

† This had at length become possible, in consequence of the return to Sir William Mansfield from Mr. Jervis through the medium of the court martial, according to a decree of the civil court, of certain household account books, the property of his Excellency, which had hitherto been illegally detained by Mr. Jervis, notwithstanding frequent requests and orders from him to deliver them up.

‡ Mr. Jervis has been informed by the Adjutant General of the Army, that all the books and papers forming the Appendix of the Court Martial Proceedings have been forwarded to England; but that that Appendix does not include all the numerous books examined by the court martial, that court not having considered it necessary to attach the said books to its proceedings, but having contented itself with examining them as far as considered requisite, and taking evidence on oath as to parts of them, which bore upon the issues under investigation.

nothing but further and indefinite delay is to be gained by postponing a settlement until the proceedings of the court-martial are closed in England.

7. Such being the present circumstances, it seems necessary here to recapitulate the several occasions on which Mr. Jervis has been invited to produce and close his accounts, and the courses by which any settlement has been effectually prevented so far, and is now sought to be indefinitely postponed, notwithstanding the opportunities afforded to Mr. Jervis of proving his allegations of Sir William Mansfield's indebtedness to him, and in spite of my client's untiring efforts to bring these allegations to an issue, and to obtain from Mr. Jervis, some account of the large sums advanced to him by his Excellency.

8. First, then, Mr. Jervis was repeatedly invited, so far back as May last, by the Military Secretary to his Excellency, and again by the committee of audit, to produce and close his accounts. Refusing these invitations, he instituted two money suits against Sir William Mansfield, one in May, and the other in June last, claiming in the one case *Rs.* 1,444. 5. 6. as due to him on a building account; and in the other about 2,500 rupees as due to him on other accounts; and he alleged before the court-martial Sir William Mansfield's indebtedness to him, resting his defence mainly on that plea. On the 13th September, just when the two money suits were in a state to be shortly decided, Mr. Jervis suddenly and unreservedly withdraws both his suits, while at the court-martial no attempt was made to prove or to show Sir William Mansfield's indebtedness. Now, when in accordance with his own unreserved proposition, the best account that could be made up from the data available is presented, and his correction solicited, he refuses to "enter into the question of accounts between himself and Sir William Mansfield," upon a pretext to which it is quite impossible to assign any other object than an indefinite postponement.

9. I must not omit to add, on this subject, that Mr. Jervis, having entered upon the management of Sir William Mansfield's expenditure on the 1st September 1865, with a clean sheet, has to this day, after the lapse of more than 13 months, rendered his Excellency no account whatever of his charge, or of the large sums, aggregating about 16,500 rupees, which have passed through his hands for household purposes; that having persistently withheld Sir William Mansfield's books and papers, my client was compelled to institute a suit in the civil court for recovery of the same; that my client, after encountering various obstacles, having obtained a decree, fresh obstructions were opposed to his execution of the decree; so that, although the decree was obtained two months ago, he is still kept out of possession of some of the papers (as distinguished from account books) decreed to him; that Mr. Jervis, having stated in his answer to the suit that he had no books belonging to the plaintiff then in his possession, "all such books having been lodged in the court-martial," subsequently filed before the court-martial several books, confessedly the property of Sir William Mansfield; and, finally, that to this day, in spite of the decree against him, and to the great inconvenience of my client, Mr. Jervis retains possession of many receipts, bills, vouchers, &c., belonging to payments made by him from Sir William Mansfield's funds, in discharge of his trust as manager of his Excellency's household expenditure, on the plea that such papers are his own property.

10. It requires no elucidation to make it plain that the person who is aggrieved by such determined obstruction to any settlement of the accounts is not the person who indulges in vague allegations of indebtedness, which in one court he withdraws at the last moment from proving, and in the other court does not attempt to prove, but the person who has advanced large sums of money, of which he seeks in vain to obtain an account, and who, equally in vain, earnestly and anxiously seeks to discharge any sum which can be shown to be due by him, although, according to all the facts before him, he is unable to conceive that any indebtedness on his part can possibly exist, or ever has existed, but who has, on the contrary, the best grounds for concluding that the sums advanced by him, cover considerably more than has been expended on the purposes for which they were given.

11. As Mr. Jervis declines to correct the accounts presented to him, or to furnish other data, it only remains for me, as Sir William Mansfield's counsel, to

 declare

declare the account which I forwarded to you to be a final one, and to proceed to a settlement accordingly, in pursuance of Mr. Jervis' previous unreserved offer, which was accepted by my client.

12. I therefore enclose the account. You will perceive from it that Mr. Jervis received for the household charges 16,495 rupees in all, and that his expenditure on the same account amounted to only *Rs.* 14,080. 6. 11., leaving a balance of *Rs.* 2,414. 9. 1. due to Sir William Mansfield on that account. To this has been added *Rs.* 920. 10. 8., value of stores belonging to Sir William Mansfield, appropriated by Mr. Jervis to his own use, as admitted before the court-martial, and *Rs.* 47. 14. on account of Mr. Jervis' travelling expenses, included in the account of the Commander in Chief's table expenses for March, as also admitted before the court-martial, making a total of *Rs.* 3,183. 1. 9. due by Mr. Jervis to Sir William Mansfield on the household accounts.

13. As regards the building account, it will be seen that although my client was liable, under his contract,* for only 2,000 rupees towards the construction of the aide-de-camp's house, Mr. Jervis appropriated, according to his own showing, *Rs.* 3,618. 1. 6. of the monies received by him from Sir William Mansfield, to that purpose, and that Sir William Mansfield, notwithstanding his contract to the contrary, has, as a matter of grace, credited Mr. Jervis with the full excess amount of *Rs.* 1,618. 1. 6. claimed by him as having been expended on the house in question; and further, with the sum of 400 rupees expended by Mr. Jervis on that building, according to his own agreement, of the total sum of *Rs.* 2,018. 1. 6. thus allowed as an act of grace, 200 rupees are included in the 2,600 rupees deducted on the debit side, on account of cheques given for building purposes, and the remaining *Rs.* 1,818. 1. 6. appear on the credit side: this latter amount being deducted from the total sum of *Rs.* 3,183. 1. 9. due on the household accounts, still leaves a balance of *Rs.* 1,365. -. 3. payable to Sir William Mansfield.

14. It is necessary to add, that besides paying, as above shown, all sums charged by Mr. Jervis in excess of the 2,000 rupees, for which alone Sir William Mansfield was liable, his Excellency has completed the construction of the house at his own expense, has discharged all the heavy outstanding liabilities incurred by Mr. Jervis, and not included in his account, and has refunded to Mr. Jervis, as likewise to another of the aides-de-camp, on leaving his staff, the sums contributed by them towards the enlargement of the building for their own convenience, and according to their own proposition and agreement. Thus a house, on which my client proposed and agreed, as an act of favour, to expend 2,000 rupees, that sum

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* The following is a transcript of the agreement:

It having been my intention to make for my aides-de-camp detached rooms with bath-rooms, leaving them to provide their own out-offices, stables, &c., at Woodville, they have now asked me for permission to put an upper storey on the rooms in question at their own expense. I see no objection to this, as I suppose the cost to them cannot be much, seeing that no additional roofing is thereby required.

To avoid confusion of accounts, it will be better for me to say that I will give the sum of 2,000 rupees (two thousand), which I understand to be rather in excess of what would have been required to carry out my original design.

The house and offices can thus be completed by Captain Jervis according to his wish, and that of his brother aides-de-camp, the difference of expense being borne by them.

The plan of ground floor to be maintained as already skeletoned and commenced, and the verandah being carried up to the roof to protect the walls of the upper storey, according to the usual plan of building in Simla.

It is understood that this does not give any future lien on my estate or the house concerned, to those who now by their expressed desire undertake to add to the original design of the latter.

(signed) *W. R. Mansfield.*
(signed) *Hy. D. Christie.*
(signed) *W. Harbord.*
(signed) *O. E. Scott Jervis.*

4 September 1865.

sum being fully sufficient for such a building as he desired to construct, has in fact been made to cost him 7,365 rupees*.

15. The account shows plainly enough, that Mr. Jervis' allegations of Sir William Mansfield's indebtedness to him are entirely without foundation, there being still a balance in his Excellency's favour of *Rs.* 1,365. –. 3., after giving Mr. Jervis credit, as an act of grace, for the sum of *Rs.* 2,018. 1. 6., of which *Rs.* 1,618. 1. 6. were advanced to him for house and other ordinary expenses, but were alienated without Sir William Mansfield's knowledge, towards the construction of the aides-de-camp's house, in excess of the amount which he had agreed to pay, as a free gift for the benefit of his aides-de-camp, and had already paid in full, his Excellency having been studiously led to believe to the last moment, that there had been no excess of expenditure beyond the sum covenanted and paid. The obvious inference is, that the house-building suit was, in fact, an action brought against Sir William Mansfield to recover money which had already been improperly alienated from him. It is obvious also, that but for Sir William Mansfield's admission, as an act of grace, of the funds alienated in excess, to the construction of the aides-de-camp's house, and but for his allowing a refund of the sum expended by Mr. Jervis for his own convenience, according to his own agreement, towards the enlargement of that building beyond the original design, the balance in favour of his Excellency would have been, not *Rs.* 1,365. –. 3. only, but the much larger sum of *Rs.* 3,183. –. 3.,† not an inconsiderable proportion of advances, amounting altogether to 16,295 rupees, exclusive of 2,600 rupees given for building purposes.

16. The value of the stable necessaries and horse furniture, amounting, as charged and admitted before the court-martial, to 275 rupees, or thereabouts, has not been debited to Mr. Jervis in the present account; the saddlers, Messrs. Monteith & Co., have been instructed to act, on Mr. Jervis' own admission, at the court-martial, with respect to the articles obtained from them for his own use, under the Commander in Chief's name.

17. In conclusion, I have to inform you that I feel myself bound, in justice to my client, to publish this correspondence, showing Mr. Jervis' indebtedness to the Commander in Chief, the measures taken by me, on Sir William Mansfield's behalf, to close the account, Mr. Jervis' further and indefinite postponement of any settlement, and the settlement which I now declare, as his Excellency's counsel, in default of any corrections or further data from Mr. Jervis.

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* *Cost of Aides-de-Camp's house.*

	Rs.
Sum given originally by Commander in Chief	2,000
Expended by Mr. Jervis, without authority, from a cheque given for other building purposes	200
Excess paid by Mr. Jervis from the Commander in Chief's funds, given for other purposes	1,418
Outstanding liabilities incurred by Mr. Jervis and since paid by the Commander in Chief	1,397
Sums returned to Captains Christie and Jervis	800
Cost of completing the house	1,550
Rs.	7,365
Add 400 rupees paid by Captain Harbord, Aide-de-Camp	400
TOTAL *Rs.*	7,765

† While owing this amount to the Commander in Chief, Mr. Jervis instituted his second money suit against his Excellency for 2,500 rupees, stated to be due to him on the household account.

ABSTRACT STATEMENT prepared from the detailed Account Sheets as furnished to Mr. *Jervis*, on the 27th September.

Date.	RECEIPTS.			Date.	EXPENDITURE.		
		Rs. *a.* *p.*				*Rs.* *a.* *p.*
3 Oct. 1865	Cheque on Simla Bank	2,000 – –		October 1865	Paid house expenses, servants and bills, for September	2,540 10 10
13 „ „	„ „ „	3,000 – –		November „	„ „ „ „ „ October	1,548 10 2
28 „ „	„ „ „	600 – –		December „	„ servants for November and bill	1,262 8 –
20 Dec. „	„ Oriental „	3,356 – –		January 1866	„ „ December and bill	665 – –
5 Jan. 1866	„ Simla „	500 – –		February „	„ „ January, table expenses for February (9th to 28th) and bills	1,757 15 2
18 „ „	„ Oriental „	1,000 – –				
19 Feb. „	„ „ „	2,000 – –		March „	„ servants for February, table expenses, and bills for March *Rs.* 2,191 6 2	
21 March „	„ „ „	4,000 – –				
18 April „	„ Simla „	2,000 – –		„ „	„ table expenses, and bills for November and December 1865, and January 1866 2,740 – –	
	Balance from Captain Christie *Rs.* 87 – –					4,931 6 2
	Recovery from Cook 100 – –					
	Pay of six Chuprassies for months of September, October, November, and December, 1865, and January, February, and March, 1866, included in servants' wages on credit side 252 – –			April „	„ servants for March, and table expenses for April, &c.	1,374 4 7
		439 – –				
	TOTAL *Rs.*	18,895 – –				
	Deduct given in above cheques for the A. D. C.'s house *Rs.* 2,000 – –				Balance, debtor	2,214 9 1
	Ditto, ditto, for Woodville Ice House, &c., of which only 400 rupees were so applied, the remaining 200 being shown as expended on the A. D. C.'s house 600 – –					
		2,600 – –				
	TOTAL *Rs.*	16,295 – –			TOTAL *Rs.*	16,295 – –
	Balance, debtor, on household account	2,214 9 1			Sum allowed as an act of grace on a building account, notwithstanding a contract to the contrary, *Rs.* 1,618. 1. 6., of which 200 are included in the 2,600 rupees deducted on the debit side of the above abstract	1,418 1 6
	Value of wines and stores taken	920 10 8			Sum returned to Mr. Jervis, the same having been paid by him towards the enlargement of house for his, Mr. Jervis' use, according to an agreement	400 – –
	Travelling expenses included in the Commander in Chief's table expenses for March	47 14 –			Balance, debtor	1,365 – 3
	TOTAL *Rs.*	3,183 1 9			TOTAL *Rs.*	3,183 1 9

NOTE.—The cheques, a list of which Mr. Jervis handed into the court-martial, and represented that they had been given on the Commander in Chief's account out of his own funds, are included in the credits shown above, although there is good reason to believe that more than one of them could not be proved as paid entirely for his Excellency.

Simla, 26 September 1866. (signed) *T. E. Gordon.*

From Captain *Scott Jervis*, to the Editor of the "Englishman;" dated Calcutta, 27th October 1866.

THE letters which you published yesterday from Mr. William Tayler, and from Mr. Plowden, with another from the latter gentleman to the address of my counsel, contained in your issue of to-day, form only a portion of the correspondence which has taken place on the subject to which they relate. I have no copies with me of those letters which are wanting, but I have asked my counsel, Mr. Tayler, who is now at Lahore, to forward you copies of the same for publication.

The abstract of accounts appended to Mr. Plowden's letter, published yesterday, is merely a portion of the account it is intended to represent. It has been forwarded to the professional accountant at Simla, who was employed in May last to draw up a separate statement of each of the two accounts. The building account he completed at once, the details of that account being in my possession. It was presented in that month to Sir William Mansfield for settlement, but it has remained to this day unsettled by his Excellency, though Sir William Mansfield, as I gather from Mr. Plowden's letter, acknowledges it to be perfectly correct. This account shows a balance due to me by his Excellency of 1,800 rupees and upwards. The other account, viz., the house account, was made out by the accountant to the extent of the information in my possession, but could not be finally closed, as his Excellency Sir William Mansfield was unwilling to hand over to me that portion of it which remained in his hands, which unwillingness on his part has prevented the account from being closed up to the present. This account shows likewise a balance in my favour. I advert to this, as it would appear from Mr. Plowden's statements that no such indebtedness on his Excellency's part exists.

I desire to point out the above to avoid any erroneous impression being formed, pending the completion of the publication of the entire correspondence and accounts.

From *W. Tayler*, Esq., Counsel for Captain *Jervis*, to *George Plowden*, Esq., Counsel for Sir *W. Mansfield*; Calcutta, dated 9th January 1867.

WITH reference to your letter of 26th September, forwarding a statement of accounts between Sir William Mansfield and Captain Jervis, I have now the honour to send you a statement drawn out by the latter gentleman from data in his possession, which exhibits a result considerably different from that which is shown by your calculation.

I regret to observe that in publishing your last letter you omitted to insert the answer which I wrote to you from Lahore, on the receipt of your communication.

I would remark that the present statement does not profess to be entirely accurate, though sufficiently correct to show that there is a large balance in favour of my client.

There are, doubtless, items which may be subject to further discussion and future adjustment; the books in which the details are comprised being in the possession of the Judge Advocate General in England, and other papers which might have thrown future light upon the subject, having been taken possession of by the friendly committee at the outset of the discussion.

P.S.—As Captain Jervis intends to proceed to England by the next mail, and I shall myself go very shortly afterwards, your next communication should be addressed to our attornies, Messrs. Dawson and Bryan, 33, Bedford-square, London, W.C.

W. T.

OPEN SKETCH.

	Rs.	a.	p.
By amount received by cheque in October - - -	3,000	–	–
„ „ „ December - -	3,356	–	–
„ „ „ January - - -	500	–	–
„ „ „ „ - - -	1,000	–	–
„ „ „ February - - -	2,000	–	–
„ „ „ March - - -	4,000	–	–
„ „ „ April - - -	2,000	–	–
„ Balance received in September 1865 - - -	87	–	–
„ Amount credited to Sir Wm. Mansfield pending adjustment of accounts to meet sums expended on my account - - - - - - - -	600	–	–
Balance in my favour - - - - - -	1,843	15	10
	18,386	15	10
„ Amount credited in building account - -	3,426	4	–
Balance in my favour - - - - - -	1,818	1	6
	5,244	5	6
To amount of household expenses and bills for September 1865 as per cheques and vouchers - - - -	163	10	–
„ Amount of household expenses and bills for October 1865, as per cheques and vouchers - - - - -	1,517	14	4
„ for October 1865, vouchers not yet received - -	500	–	–
„ „ November 1865, as per cheques and vouchers -	2,100	8	3
„ „ December 1865, - ditto - ditto - -	1,447	8	9
„ „ January 1866, - ditto - ditto - -	1,701	–	–
„ „ February „ - - ditto - ditto - -	1,756	15	–
„ „ March „ - - ditto - ditto - -	5,653	2	6
„ „ April „ - - ditto - ditto - -	3,546	5	–
	18,386	15	10
„ Amount debited in building account - - - -	5,244	5	6
	5,244	5	6
Total balance in my favour (1,843. 15. 10. + 1,818. 1. 6.=) - - - - *Rs.*	3,662	1	4

9th January 1867. *Scott Jervis.*

From *George Plowden*, Esq., Counsel for Sir *William Mansfield*, to *W. Tayler*, Esq., Pleader, Calcutta; dated Umballa, 22nd January 1867.

I HAVE come to see in the "Englishman" newspaper a letter from you to my address, dated the 9th instant, written with reference to my letter to you of the 26th of September last. It is a novel mode of conducting a professional correspondence to send a reply, not to the counsel to whom it is addressed, but to a newspaper for publication. The public will naturally have been led to conclude that your letter was sent first to the person to whom it is addressed, and afterwards for publication, but you know the fact to be that the letter, though addressed to me, has never been sent to me at all.

You regret to observe that, in publishing my last letter, that is, my letter to you of the 12th of October last, I omitted to insert the answer which you wrote to me from Lahore, on receipt of my communication. Here, again, anyone would be led to suppose that I had suppressed a letter of importance, but you know the fact to be that your answer was of no importance whatever, inasmuch as it simply communicated that, as Mr. Jervis was in Calcutta and you were at Lahore, you could "neither do nor say anything" till you received his instructions. But, if you considered this letter, which is dated the 24th of October last, to be of so much importance as to warrant the expression of your regret that it was not published with the other correspondence, why, I may ask, did not you supply

supply the omission at the time, and why, failing that, did you not publish it with your present letter? The inevitable conclusion is, that you well knew the answer to be of no consequence, though it suited you to exhibit the omission as a grave suppression on my part.

Nor is it possible to understand why your present letter is written with reference to my letter of the 26th of September, seeing that that letter was definitively answered by you on the 29th of September, and that the letter which remained to be answered, and is still unanswered, is my letter, dated the 12th of October. In your letter of the 29th of September, you distinctly informed me that Captain Jervis was not inclined to enter into the question of accounts between himself and Sir William Mansfield, at the present crisis, or until after the close of the proceedings in England. What, then, has moved him to change his resolve and furnish the present account? Obviously, my letter to you of the 12th of October, which you ignore.

I may here state that the reason why your letter of the 24th October was not published with the other correspondence is, as you must have known, that it was not received until after that correspondence had been published, nor until after Mr. Scott Jervis' own letter in regard to that correspondence, dated the 27th of October, and addressed to the editor of the "Englishman," had appeared in the "Englishman" of the same date. Your letter, as I have already shown, simply stated that you could "neither do nor say anything" until you received Mr. Jervis' instructions, and that you had forwarded my letter of the 12th of October to him by that day's post, under a registered cover.

Captain Jervis, in the meantime, had seen, and himself noticed that letter in the "Englishman." It must surely have been obvious to you, when you expressed your regret that I omitted to insert the answer you wrote to me from Lahore, that to publish such an answer after Mr. Jervis had himself noticed, in a letter to the "Englishman," the very letter which you have referred to him, expressly because you could "neither do nor say anything" yourself concerning it, would have been a work of the clearest supererogation on my part.

And this seems the fitting place to notice Mr. Jervis' said letter of the 27th October. He commences by saying, that the letter published formed "only a portion of the correspondence which had taken place on the subject to which they relate," and that Mr. Jervis had no copies with him of those letters which were wanting, but that he had written to Lahore to you, as his counsel, to forward copies of the same to the "Englishman" for publication. Upwards of three months have elapsed, and no other letters have been published, for the very good reason that the correspondence, as originally published, was quite complete, except as to your letter from Lahore, of the 24th October, which had not been received at the time, of which Mr. Jervis could have had no knowledge when he wrote in Calcutta, on the 27th of October, and which, in fact, as already shown, contained nothing.

Mr. Jervis next states, that the abstract of accounts appended to my letter (of the 12th of October) "is merely a portion of the account it is intended to represent," and the "professional accountant" at Simla is again brought to the rescue.

If my account was incomplete, it was in Mr. Jervis' power to complete it when it was sent to you on the 26th of September last, expressly that Mr. Jervis might make any corrections, and supply any omissions in it. Your reply, however, with Mr. Jervis at your elbow, was, that you were entrusted by Mr. Jervis to say, that he was not inclined to enter into the question of accounts between himself and Sir William Mansfield at all, until after the close of the proceedings in England. This fact was ignored by Mr. Jervis in his letter, dated the 27th of October last, to the editor of the "Englishman," and is equally ignored in your present communication to my address, not sent to me but published in the "Englishman;" and it might be supposed from these letters, contrary to the fact, that Mr. Jervis had never distinctly declined to enter into the question of accounts, but had all along been quite ready to assist in settling them. Then, as to the "professional accountant," who, we are told, has been employed ever since May last, in unravelling these intricate accounts; is it to be understood that the "open sketch" annexed to your letter is the produce of his nine months' gestation? If so, it would have been satisfactory if his name had been appended to it.

I now return to your letter of the 9th of January, and its "open sketch," and on this production I have first to observe, that it does not reply, and does not pretend to reply to my last letter of the 12th of October, recapitulating the

several occasions on which Mr. Jervis has been invited, in vain, to produce and close his accounts. The damning facts remain that Mr. Jervis instituted two money suits against Sir William Mansfield, alleging indebtedness; that having prosecuted these suits for several months, he suddenly, when the case for the defence was about to be opened, abandoned and withdrew them, and, at the same time, voluntarily proposed to leave the settlement of the accounts between himself and Sir William Mansfield, unreservedly, to his Excellency; that in accordance with his own unreserved proposition, the best account that could be made from the data available was presented to him, and his correction solicited; and that he, thereupon, withdrew from his written word, and refused to enter into the question of accounts between himself and Sir William Mansfield, upon a pretext, the futility of which was fully exposed in my letter of the 12th of October, and to which it is quite impossible to assign any other object than an indefinite postponement.

To these have now to be added a few other significant facts. Forced into the action which he had declined by the publication of the correspondence, Mr. Jervis addresses a letter to the editor of the "Englishman," with reference to that correspondence, on the 27th of October last, and leads the editor and the public to suppose that he has been misrepresented; that there is other correspondence which has been withheld; that the account appended to my letter of the 12th October is only a fragment; and that the missing correspondence and a complete statement, and balance sheet, prepared by a professional accountant, would be published "very shortly."

Two months and a-half pass away, and then, when Mr. Jervis is on the eve of leaving the country, and you are about, very shortly, to follow him, as you yourself inform me, I am favoured with a letter in the "Englishman," dated the 9th of January, with an "open sketch" annexed to it, to which, practically, no reply is possible, because Mr. Jervis would have left India before I could even see the letter, the "open sketch" being, at the same time, unattested by any professional accountant, and palpably worthless as an account, while the promise to publish the portion of the correspondence said to be wanting, and the copies of which were said to be with you, is not redeemed at all. I forbear to comment upon such proceedings; but it would be preposterous to suppose that, under such circumstances, I would permit my client to depart from the settlement of accounts declared in my letter of the 12th October.

Before, however, dismissing your letter of the 9th of January and its "open sketch," I would draw your attention to two points, namely, first, that the balance alleged by Mr. Jervis to exist in his favour is partly produced by the sum of money on the building account which had been credited to Mr. Jervis as an act of grace, notwithstanding an agreement to the contrary, and, second, the account itself manifests that, when the appropriation of Sir William Mansfield's property took place (which has been the subject of so much investigation), the balance of Sir William Mansfield's money in Mr. Jervis' hands was largely in his Excellency's favour.

When your letter of the 26th September was received, in which Mr. Jervis, withdrawing from his written word, declined to enter into the question of accounts between himself and Sir William Mansfield, I strongly advised that a suit should be instituted against him for the sum shown by my account to be due by him, but my client was averse to originating any law proceedings if it could possibly be avoided.

The result has shown how right I was in my opinion, that nothing but a fruitless correspondence would ensue, unless Mr. Jervis' mere allegations of my client's indebtedness to him, which he had himself withdrawn from the Court into which he had carried them, were again subjected to the searching scrutiny of a court of justice. It is quite obvious that the only mode of bringing these mere allegations to an issue, is to put Mr. Jervis into court, since he has abandoned his own suits, and withdrawn from his expressed intention "to leave their settlement, unreservedly, to his Excellency's sense of what is fitting and correct;" but, as you will see, this only course has been effectually closed to us by your delaying a reply to my last letter for three months, and then only forwarding one, through the channel of a newspaper, so timed, that it could not possibly be seen by me until after Mr. Jervis had left the country. It is true you are so good as to ask me to address my next communication to your attornies, Messrs. Dawson & Bryan, 33, Bedford-square, London, as you are yourself proceeding to England

land very shortly; but this proposition sounds so ludicrous, upon the top of all the past proceedings, that I can scarcely suppose you to be serious; at all events, I am not disposed to avail myself of this very useful privilege, or to pursue as far as England the vain shadows so persistently presented to my grasp. Accordingly, I have no intention of continuing this correspondence; the only further action I will consent to take in this matter is to put Mr. Jervis into court, and to bring the allegations of my client's indebtedness to him, to which he so carefully confines himself, once more to the test, which Mr. Jervis found it expedient first to apply and then to abandon.

MEMORANDUM of the Circumstances connected with the Trial of Captain *Jervis* by General Court Martial, compiled from Official Papers, Civil and Military.

ALTHOUGH the press has largely discussed the trial of Captain Jervis at Simla for scandalous conduct, no complete and connected narrative of the circumstances out of which that trial arose, and of the events which accompanied and followed it, has yet appeared; and it is believed that from the want of such a narrative much misconception is abroad.

In the following memorandum it is proposed to trace the case from its origin, and to omit no important particular. It may perhaps be thought that some of the matters adverted to are unimportant, but it may be found that subsequent events have been influenced by them, and the necessity for mentioning them will thus be explained.

Captain Jervis was one of three aides de camp on the personal staff of the Commander in Chief in India, and in September 1865 assumed charge of his Excellency's household. Shortly after this an estate was purchased at Simla by Sir William Mansfield, but in consequence of his approaching departure for Calcutta, it was proposed not to occupy the house on that estate until his return in the following spring. It had been the custom of previous Commanders in Chief not to provide their aides-de-camp with house room at Simla, unless there happened to be accommodation under their own roof; but Sir William Mansfield was unwilling that his staff should be put to expense on such account, which was now a heavy one, owing to the great rise in rents. He proposed, therefore, to build on his new estate a small range of quarters close to his own house, capable of affording for each of the three aides-de-camp such accommodation as single men think sufficient at a club. A sketch was accordingly prepared, and it was considered that the proposed building could be completed for something under 2,000 rupees. Captain Jervis and the other aides-de-camp thought, however, that it would be convenient to them to have more accommodation, and knowing that the Commander in Chief could not be expected to be at any expense on their account, they asked permission to add an upper storey to the proposed ground plan at their own cost, Captain Jervis, who assumed charge of the whole affair, having intimated to all the parties concerned that the additional expense would be moderate. Sir William Mansfield saw no objection to the arrangement, provided this outlay on the part of each aide-de-camp were clearly understood not to constitute a lien on his estate. He accordingly wrote a memorandum signifying his assent, and stating that, to save confusion, he would give 2,000 rupees, and that they could then complete the building as they desired. This memorandum was signed by Sir William Mansfield and the three aides-de-camp as a record of the terms of the agreement between them. The work was accordingly put in hand by Captain Jervis, and the 2,000 rupees were paid by the Commander in Chief in two instalments of 1,000 rupees each.

Vide proceedings in Civil Court, Simla, in building suit withdrawn and abandoned by Mr. Jervis.

At the beginning of April 1866, his Excellency returned to Simla from Calcutta, and took up his residence in his own house. Captain Jervis had arrived a few days previously. It may here be mentioned that Sir William Mansfield had also taken for the season a country house at Mahasoo, distant six miles from Simla, and which had been rented during the previous autumn by Captain Jervis on his own account. It was on these premises that the sheep farm mentioned hereafter was established.

During the month of April one or two events took place which, unimportant in themselves, are not without value in their bearing on subsequent occurrences.

Vide papers elicited by Mr. Jervis on the court martial

in matters constantly declared to be irrelevant, but which he insisted on bringing before it.

It has been stated that Captain Jervis assumed charge of the household in September 1865. This charge included the management of every department in a very large establishment which had to be kept in complete order, not only when stationary, but while marching over enormous distances. It so happened that Sir William Mansfield had occasion to find fault with Captain Jervis for an omission, in connection with his charge of the stable, which had occurred twice before. A very kind note was addressed to him on the point, but the tone of the reply showing considerable misapprehension of the position of an aide-de-camp and of the military duty he bore to his chief, his Excellency wrote to Captain Jervis through the military secretary. In the correspondence which ensued, Captain Jervis displayed a strong desire, which appeared at the time singular, to have everything under his own control, although he afterwards pleaded press of work as an excuse for the neglected state of his accounts. On his being directed to hand over charge of part of his duties to another aide-de-camp, he demurred, and expressed a desire to give up the whole charge of the household, rather than retain a portion only. It then became necessary to point out that certain duties were assigned to him as military duties, and that so long as he remained an aide-de camp he had no option in the matter. It ended in an official acknowledgment being recorded by Captain Jervis, that he accepted his position as a military one, and was prepared to obey orders.

An explanation of very obvious facts, in view to the removal of misapprehension as to the duties of an aide-de-camp.

It may here be useful to explain the position of Mr. Jervis as aide-de-camp in charge of the Commander in Chief's household, with reference to the point that has been a good deal discussed by the newspapers, of the supposed analogy of his functions to servile duties. This idea is entirely erroneous. According to the custom observed by governors and general officers in high command, one of the aides-de-camp is invariably appointed to perform the office of comptroller of the household, and this custom holds in the establishment of the Commander in Chief, where it has always been assumed that the number of aides-de-camp allowed by the State was purposely so proportioned as to admit of this duty being discharged. The household of the Commander in Chief in India, it may be observed, ranks in size and importance only after that of the Viceroy. It has to meet the demands of continual public entertainments of different kinds, as required by one of the highest official positions in the country; the officer in charge, or comptroller, directs two or three houses in different parts of the country, the personal camp of the Commander in Chief when his Excellency marches, and is responsible for the military guard and escort, besides perhaps 100 servants. He has under him head-servants of every description, and such other assistants as may be necessary. Unlimited trust is placed in him regarding household expenditure, and it would be his duty to check any irregularities in the house, whether on the part of officers of the personal staff or of the servants. If the position of the Commander in Chief of India, and the absorption of his time in public business, be considered, it becomes clear that such official control and assistance in the establishment by the officers paid by the State and allowed for the purpose, is simply a necessity which could not be escaped from. It follows that the position of an aide-de-camp who assumes charge of the household of a commander in chief or governor, is one of great trust, and that the duties involved by the acceptance of such a post are by no means derogatory to the status of an officer and a gentleman, but are rather of such a nature as to require an officer and a gentleman for their proper performance.

When the true nature of the post is considered, it is obvious that a breach of trust on the part of such an official, when entrusted with control, takes rank in criminality with the breach of trust of the manager or confidential agent of any other large business or concern. Thus in military language does it arise that such breach of trust amounts to "conduct unworthy of an officer and a gentleman." And it must always be remembered that all dishonourable conduct on the part of a military officer, wherever committed and under whatever circumstances, is triable as a military offence, and that there is an obligation to try it.

Vide proceedings of court martial as above noted.

About a week after the occurrences mentioned above, it was necessary again to point out to Captain Jervis an omission in his duty. His conduct was in this instance so annoying, that he was told in a private letter from Major Flood, that the Commander in Chief was quite tired of these constantly recurring little disagreeables, and that if he was not prepared to accept his duties as aide-de-camp, it would be much better if he left the staff on friendly terms. This was answered by

by a note in which he expressed a regret that he should have failed in the performance of his duty. The tone of this letter was so good, that Sir William Mansfield hoped, that when his aide-de-camp returned from a short leave of absence he had asked for and obtained, there would be nothing to prevent his resuming his position on the old terms of familiarity. But it was during this short absence that certain facts transpired in connection with a matter which it will be necessary to describe in some little detail. Its bearing on the charge of scandalous conduct, ultimately brought against Captain Jervis, lies in the fact that it led to the discoveries upon which that charge was based. This matter has been industriously confounded with the accusation submitted to the court-martial which afterwards assembled, although it had no connection with it, except that it was the means of strengthening suspicion against Captain Jervis.

This matter was originally published at Mr. Jervis's instance, and has consequently formed the subject of constant misrepresentation against the Commander in Chief, both here and in England.

It had long been desired by his Excellency that a private farm should be established for supplying his table with mutton and poultry. It is a common practice in large households in India to keep such an establishment, and thus be independent of the local markets. The arrangement had existed in Sir William Mansfield's household when Commander in Chief in Bombay, and Captain Jervis, who had charge of the establishment in that Presidency, was well acquainted with the system. Captain Jervis has stated that, in accordance with his Excellency's frequently expressed wish, a flock of sheep had been purchased in 1865, but it appeared that this had never been done. Very shortly, however, after his arrival at Simla in the spring of this year, Captain Jervis did establish a farm at Mahasoo. But the system was very different from that formerly adopted. All purchases were now made in Captain Jervis's name; the sheep were branded with his initials, and books were kept in which Sir William Mansfield himself appeared as a retail customer of Captain Jervis, the prices charged to him for stock, which had been but a week or two on the premises, being greatly in advance of the rate at which the purchases had been made. All this was going on without the knowledge of Sir William Mansfield, and the true state of the case was not discovered until an English servant of Sir William Mansfield's, named Abbey, who had acted as Captain Jervis's agent in making purchases for the farm, reported them because of his feeling that all was not right. When this disclosure was made, Captain Jervis was absent on leave as above stated. The facts appeared at first sight so damaging to the character of Captain Jervis, that his Excellency declined to hear more from the butler, except after due caution in presence of the military secretary. The examination was accordingly made and recorded in the shape of question and answer, Captain Jervis being at once informed of its nature, and requested to return to Simla, when the papers, together with what the Commander in Chief had written on the subject, would be shown him.

In reply, he wrote to say he would return immediately to offer any explanation that might be required. At the same time, he acknowledged that the farm was his own, as appears from the following extract:—

"The whole, or whatever portion his Excellency wishes of the farm, such as it is, Sir William can have at any time, or take it over with its accounts from its commencement, should he so desire.

"Abbey mentioned to me the other day, that Lady Mansfield thought, that in taking charge of the establishment herself, she should take over the farm; I told him that when her ladyship mentioned the matter again, to tell her that I did not desire her to take over any more than was convenient to her, but that anything she wished to have, might of course be taken."

It will thus be seen, that when the matter was first communicated to Captain Jervis, when he was taken by surprise, and when he had had no time for elaborating excuses, he plainly admitted that he had established a farm of his own, which he offered to make over wholly or in part to Sir William Mansfield; subsequently, Captain Jervis explained the keeping the farm in his own name as "a necessary consequence of his agency;" but this explanation is obviously inconsistent with his offer to hand over part of it to Sir William Mansfield. The note which has been quoted, appeared therefore to corroborate Abbey's statement, so far as the establishment of the farm on Captain Jervis's own account was concerned, the Commander in Chief himself being constituted one of his retail customers. But at this very time a circumstance occurred which tended to show matters in a much more unfavourable light. Early on the morning of

the 3rd of May, the very day of Captain Jervis's return, a paper was brought to the Commander in Chief's house by a native servant, and both Captain Jervis and the butler Abbey being absent, came into his Excellency's hands. This turned out to be a regular note for supplies addressed to the butler by an officer, and it included, amongst other things, a joint of beef. This led to an inquiry, and it was found that, at the invitation of Captain Jervis, gentlemen in the neighbourhood had been in the habit of sending for supplies under the impression that they were as much conferring as receiving a favour. It appeared further, that the supplies given to them were not wholly the produce of the farm. The farm was one for sheep and poultry, and no beef had ever been killed on it; so that any joints of beef given on requisition, must have been purchased from butchers in the bazar.

It thus appeared, that not only had Captain Jervis established a sheep farm on his own account, of which he had retailed the produce to the Commander in Chief and officers resident in Simla, but that he had entered on a general speculation in dead meat. Meantime the officers purchasing the meat, most indubitably believed themselves to be dealing with Sir William Mansfield. The transaction will probably be considered to speak for itself, and it may be well to say that it has never been defended, except by supposed analogy to a practice which prevails in India, of allowing neighbours to receive on payment, superfluous joints of mutton when a sheep is killed,—a practice sufficiently explained by the fact, that the joints in the climate of the plains of India would otherwise be spoiled. But these occurrences took place in the hills.

For proceedings which must be admitted to have amounted to very gross impertinence, even if they did not constitute "scandalous conduct," Captain Jervis was removed from Sir William Mansfield's staff, an opportunity being however afforded him of explaining his acts to two of his brother officers. Of this opportunity he neglected to avail himself, and placed the case in the hands of counsel, apparently with the view of disputing his removal. The question was thus placed on a new footing. The duties of an aide-de-camp are, as has been stated, official duties, and thus the Commander in Chief was led to consider that an award in which he was himself concerned being disputed, the grounds of the summary action taken by him should be investigated by a court of inquiry. A court of inquiry, composed of officers unconnected with the personal staff, was therefore directed to assemble, which Captain Jervis was, with much difficulty, and after much manifestation of contumacy, prevailed on to attend. Captain Jervis took no part in the proceedings, but the finding of the Court entirely justified the Commander in Chief in removing him from the staff.

Vide proceedings of court martial.

Just at this time the matters come to light which formed the subject of the first charge on which Captain Jervis was arraigned before the general court martial. As these are well known, it will be unnecessary to notice them here further than to say that the common notion that the alleged misappropriations were petty, is quite unfounded; the alienation of the Commander in Chief's property, together with the misuse of his credit, did in fact amount to about 200 *l.*, as shown in the charges.

Advantage was taken of the court of inquiry, then under adjournment, to submit these matters for investigation, and Captain Jervis was called upon to rebut the presumption of fraud which they created.

But it is well known to all military men, that when an officer rests under imputations affecting his character, he invariably has an opportunity of removing them before being brought to trial; but if he should decline to explain, there is no option left to the Commander in Chief, whose plain duty it becomes to submit the matter for investigation by a court where the evidence can be taken upon oath. This was the course pursued in the present case. The facts were placed before the court of inquiry, but the accused declined to explain, and he was accordingly placed under arrest. But although the next step would ordinarily have been a court martial, the Commander in Chief, in the earnest hope of extricating Captain Jervis from his difficulties, devised the expedient of a confidential committee of audit. If Captain Jervis could show that his accounts were in a proper state, it was still possible that a trial involving such serious consequences might be avoided. Even to the last the Commander in Chief would have been willing to accept a proper military offer from Captain Jervis to extri-

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cate himself from the charges of misappropriation, and of fraudulently pledging the credit of another, according to the means now proposed. But this opportunity was repelled like the former, and there was absolutely no course left to the Commander in Chief than to order the arraignment of the accused on a charge of scandalous conduct, based on the facts of embezzlement. There were now no hopes that a trial could be avoided at this moment.

Under the Mutiny Act a court martial is the ordinary criminal court for the trial of soldiers charged in India with criminal offences at a distance of more than 120 miles from a Presidency town; a provision easily explained by the fewness and remoteness of the courts empowered to try European British subjects in India. As Sir William Mansfield was personally concerned in the matter, he left it to the principal staff officers to determine whether Captain Jervis should be tried by the court martial on the military or the non-military charge, the evidence being sufficient to support either a charge of criminal breach of trust under the penal code, or a charge of scandalous conduct according to the Mutiny Act and Articles of War. They decided for the charge of scandalous conduct. The proceedings of the court martial have been made sufficiently public, and need not be recapitulated at any length. The court first assembled on the 25th June, and the charges were as follows:—The first for scandalous conduct in four instances, embracing the misappropriation of wines and stores, the ordering from a tradesman (with whom the prisoner had an account of his own) articles of horse-gear on the credit of Sir William Mansfield, and two cases of fraudulently charging to the Commander in Chief his (Captain Jervis's) own private expenses. The second charge was for disobedience of orders in not producing the Commander in Chief's books and papers to the court of inquiry. The third was for disobedience of orders in not attending the committee of audit. The fourth charge set out the disobeying of a lawful command to give up his sword, and the fifth was for refusing to be tried. Owing to the slow routine of military law, and perhaps to other causes, the proceedings, with unusually long adjournments, were not brought to a close until the end of August.

The finding was, on the first charge, "not guilty," amounting, in military usage,* in the absence of an accompanying "full and honourable acquittal" on a charge of scandalous conduct, to the Scotch verdict of "not proven." On the second charge, "not guilty," and on the remaining charges "guilty." The sentence was dismissal from Her Majesty's service, followed by a recommendation to mercy. The sentence was confirmed by the Commander in Chief, who in his remarks on the trial gave his reasons at length for not attending to the recommendation of the court, and the result was finally promulgated on the 18th of September in a General Order.

General Birch, late Judge Advocate General in India, recently gave evidence in this sense in a court of law in England in the case of Keighly and Bell.

During the interval that elapsed between the sitting of the court of inquiry and the commencement of the proceedings of the court martial, the course of insubordination and contumacy pursued by Captain Jervis is probably without parallel, but it was, no doubt, deliberately intended to intimidate. A threat was conveyed to his Excellency that the press, both in India and England, would be worked to his disadvantage, and it was endeavoured to deter him from the performance of his strict duty as Commander in Chief, by the institution of three suits against him in the civil courts. The first of these was to recover money, alleged to be due on account of the house that was being built, which we have seen was exactly contrary to the agreement Captain Jervis signed; the second was to recover a sum of money said to be due on account of the household expenditure, the debt having since been proved to be the other way, viz., from Captain Jervis to Sir William Mansfield; and the third was an action for damages, laid at 10,000 *l.*, for what was called defamation of character, although no defamatory matter was set forth, and the plaintiff apparently expected to elicit the defamation of which he complained by cross-examination of Sir William Mansfield. Probably no grosser examples of scandalous, irrelevant, and impertinent allegations have ever been seen than are to be found in some of the documents filed in these suits. As all three suits went sufficiently far to show that they were completely frivolous and vexatious, they probably had for their object, first, to

Vide proceedings in the civil court at Simla.

* This distinction was fully appreciated by Mr. Jervis in his defence, *vide* Proceedings of court martial.

to intimidate the Commander in Chief, next, to give colour to certain statements which it was intended to make before the court martial, and lastly, to get those statements early before the public, and so to prepossess public opinion. The amount of truth in these statements will be seen presently. Part of the plan, it should be stated, was defeated by a successful attempt of Sir William Mansfield to get the suit for defamation, instituted at Simla, transferred to the chief court of the Punjab.

Vide proceedings in the civil court at Simla.

It now became necessary for the Commander in Chief to employ counsel to defend the civil suits thus heaped upon him; but this could not be done until after the assembly of the general court martial, as there was no practising lawyer resident in Simla except Captain Jervis's counsel. The gentleman ultimately retained strongly urged the necessity of bringing an action against Captain Jervis for the recovery of his Excellency's books and papers, which the former illegally retained, notwithstanding military orders. These books and papers, besides being urgently required by the Commander in Chief for his own private affairs, might be supposed to give valuable documentary evidence regarding the charge of scandalous conduct, considering with what persistent tenacity they were withheld by Mr. Jervis. Accordingly, with his Excellency's consent, a suit was filed for the recovery of the papers, but it was not pressed until after Captain Jervis's defence had been delivered, in order that his action in this respect might be in no way hampered. When the suit was brought on, a decree followed, as a matter of course, for all books, papers, and other documents, the property of Sir William Mansfield, either in possession of the defendant, or handed by him to the court martial. But although the decree was obtained, its execution was impeded by every possible technical obstruction, and it has been successfully evaded up to the present time. Captain Jervis's first answer in the suit was, that he had no books belonging to the plaintiff, all such books having been lodged in the court martial. But notwithstanding this, he subsequently filed with the court martial several books confessedly the property of his Excellency. The delivery of all the Commander in Chief's bills, vouchers, files of receipts, &c., for sums paid out of money received for the purposes of the household, was refused, on the plea that all such papers represented transactions between himself and third parties, and were his own private property. Of course this ground was not tenable for a moment, but the object was to obtain delay, and to this day the Commander in Chief has been unable to obtain execution of a decree passed two months ago, though he has recovered possession of the books given in by Captain Jervis to the court martial. These books are not without value, but it must be held that the papers, including vouchers and receipts, which were affected by the decree, are of greater importance still.

Vide proceedings in civil court and court martial.

The possession and retention by Captain Jervis of the bills and receipts representing the expenditure, is an important feature in the whole of the proceedings, and governs and overshadows the entire case. It is necessary to show clearly the possession by Captain Jervis of papers which would, if produced, disclose the exact state of the accounts, and prove conclusively whether the Commander in Chief was, at any given moment, indebted to him or not, an allegation on which Captain Jervis mainly rested his pretended right to empty Sir William Mansfield's cellars, and to pledge his credit indefinitely. From the first there was no attempt to deny this possession, and it is a curious feature that no explanation was offered by Captain Jervis for not producing them at the court martial, where it would, without doubt, have been of inestimable advantage to him to be able to prove his charge of indebtedness. The reason given before the court of inquiry for their not being forthcoming was that they were in confusion; to the committee of audit he stated that he did not desire to produce them, and afterwards, in a letter to the Adjutant General, he says—"With regard to the delivery to the Committee of other books and papers in my possession, connected with these accounts, I regret I must, notwithstanding his Excellency's commands, decline to give them up. . . . . Those papers are the only proof I possess of Sir William Mansfield's liability to me for a considerable sum of money expended by me on his Excellency's account, and now due to me. They also form proof of the accuracy of my accounts, and the integrity of my dealings, and on this ground I claim a lien upon them, until I have done this; as in the event of my being driven to sue for a balance in the civil court, they are the only proof that I possess."

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These documents then contained the proofs on which the second suit for 2,500 rupees, the alleged amount of the debt, was to depend. The defence before the court martial was likewise made to rest chiefly on the Commander in Chief's alleged indebtedness to the prisoner, and it was boldly asserted that a large balance was due to him. Indeed, a passage in his rejoinder, in which he comments on an implied denial of the indebtedness by Sir William Mansfield, is headed by Captain Jervis "Perjury of the Commander in Chief." Notwithstanding the absence of all proof of these assertions, and many circumstances tending to disprove them, it can well be understood that this determined assertion of indebtedness, backed as it was by an action in the civil Court, had a considerable effect on the public mind. It was thus not only the interest, but the duty of the Commander in Chief, believing as he did that the allegation was wholly false, to push the civil suits to a hearing as soon as the court martial was concluded, and to compel the plaintiff to produce his proofs. But the object of the civil suits now became apparent, for, so soon as the court martial was about to close its final sitting on revision, notice was given that all the suits were about to be abandoned, and this was done immediately afterwards. Very shortly before, a compromise on the money suits had been proposed, but was of course resolutely declined, the next step being their unreserved abandonment, accompanied by an intimation of the plaintiff's intention "to leave their settlement unreservedly to his Excellency's sense of what is fitting and correct." A balance sheet accordingly was prepared in Sir William Mansfield's household, from such books and papers as had been restored to him on the close of the proceedings of the court martial, and from other sources. Such a statement of accounts, however carefully prepared, could only be approximate, through Captain Jervis's continued retention of so many documents. But it was framed on the principle of solving every doubtful question in respect to items in the late comptroller's favour, and it is all but certain that if it contains errors, they are errors adverse to Sir William Mansfield and favourable to Captain Jervis.

Vide proceedings in civil court and court martial.

This sheet was sent to Mr. Jervis through the medium of counsel. It might have been supposed, from the tenor of the letter quoted above, that Mr. Jervis would have cordially assisted in the settlement according to the information and papers in his own possession, but instead of doing this he returned a reply through his counsel to the effect that he was "not inclined at the present crisis to enter into the question of accounts between himself and Sir William Mansfield," and it concluded by saying that after the close of the proceedings in England, Captain Jervis would be happy to assist in the completion of the accounts by supplying any information that might be required. The day after this note was written, Mr. Jervis quitted Simla, without having given up the papers, the property of the Commander in Chief, as above referred to.

Vide published correspondence.

If there could be any doubt of the general correctness of the accounts which had been prepared, it must be held to have been absolutely removed by the fact that after receipt of the balance sheet a consideration of it was finally evaded by Captain Jervis. There is therefore really nothing left but to believe that the sheet is either correct, or, if incorrect, only incorrect in its debts to Sir William Mansfield. The result of the investigation is therefore that at the present time, instead of the Commander in Chief being indebted to his late aide-de-camp in the sum of 250 *l.*, as the latter has alleged, and for which he instituted a suit at law, since abandoned, he is a debtor to Sir William Mansfield for the sum of about 320 *l.*

Vide published correspondence.

Now, when it is considered that the defence of his conduct throughout, including that on the charges of embezzlement, hinged upon the allegations of the Commander in Chief's indebtedness to him, the circumstances of this final refusal to enter upon a settlement, and the plain figures of this balance sheet, assume an importance and significance that cannot be too highly regarded. From the latter it appears that, so far from there being or having been indebtedness on the part of the Commander in Chief, there was no single month during Captain Jervis's recent control of the household in which he was without funds belonging to his Excellency; and also that when his charge ceased, there was and still is a considerable balance of money in his possession, the same being the property of the Commander in Chief.

This indebtedness, then, the foundation of Captain Jervis's defence from beginning to end, is now proved never to have had an existence. The very effron-

tery of the plea took such a hold on the public mind, that the clearest arguments were unable to bring home a conviction of what was the real truth in a contrary sense. Whether the strenuous assertion in any manner affected the mind of the court martial, it is not worth while to inquire.

Vide proceeding in magistrate's court at Simla.

With regard to the other two suits, the abandonment of which has already been noticed, nothing more is required to be said, further than to note a circumstance connected with that on account of the building, which is of some importance as affording an answer to the complaint, frequently urged against the Commander in Chief, that he declined to see Captain Jervis when the matter of the farm first transpired. The building suit had been under hearing for some days. Mr. Plowden, Sir William Mansfield's counsel, had occasion, in the course of his cross-examination of the witnesses, to put several questions tending to prove that Captain Jervis's deposition on oath with regard to the suit was in several particulars incorrect. The replies were not palatable to the plaintiff, who was present in court, and on the adjournment of a sitting at which these questions had been put, Captain Jervis deliberately assaulted Mr. Plowden at the door of the court-house, though not until he had stated the motive of the assault, that it was intended to deter Mr. Plowden from asking questions injurious to the plaintiff's credibility.

During this or the following day he committed similar assaults on three other individuals, who either had or were thought to have taken some part in the prosecution against him. A summons was of course taken out by Mr. Plowden and Abbey, one of the others who had been assaulted, and the result was that Captain Jervis had to tender most ample apologies to both in open court, and was bound over to keep the peace to Her Majesty's subjects for six months.

These circumstances, together with the events related at the commencement of this paper as having happened in the month of April, and Captain Jervis's own plea in defence on the fourth charge before the court martial, viz., his ungovernable temper, afford an answer to the complaint above mentioned, and clearly justify the prudence of the Commander in Chief in declining to see one who, having so little control over himself, might have been led in a moment of forgetfulness to a grave aggravation of his offence. To a military man the necessity of a special reason for not according an interview to an accused officer will scarcely present itself. Whatever may have been the terms of intimacy previously existing between a commanding officer and an officer resting under imputations affecting his character, the customs of the service require that all communications shall be made through the recognised official channels, and this applies with the greater force in proportion to the disparity of rank. It is to be remarked, however, that Captain Jervis never asked for an interview, from which it may be fairly gathered that he did not desire to face the Commander in Chief under the circumstances.

The foregoing narrative, it is believed, presents a tolerably complete account of this complicated case, so far as such an account is necessary to correct or supplement the statements of the case already before the public. It has not been attempted to argue on the facts or to draw inferences, but simply to give the history of the case in a connected manner down to the time of Mr. Jervis's leaving Simla.

G. W. Plowden,
Counsel for Sir William Mansfield.

22nd October 1866.

Note.—This paper was originally compiled for the information of my friends, who were fairly mystified by the persistent misrepresentation continued for many months in the public prints. Through inadvertence it was despatched to my friends at first without the signature of my counsel. That omission is now rectified, the paper having been duly authenticated by Mr. Plowden.

The 19th Frbruary 1867. *W. R. M.*

MEMORANDUM by the Commander in Chief in *India*, on the Official Treatment of the *Jervis* case.

HAVING noticed the points to which public criticism has been recently directed as regards the official management of the Jervis case, I think it right to place on record certain arguments and facts which have either entirely escaped attention, or are unknown except to those who may be connected with Government in India, or have had to give practical execution to the Mutiny Act in that country.

I observe in the first place that I am much blamed because I did not proceed against Mr. Jervis, late a captain in the 106th Foot, by means of one of the ordinary criminal courts.

In answer to this I would say, that so far as I myself was personally concerned, it was my wish to do so.

Having, however, personal interests in the matter of the prosecution, it appeared to me that this was hardly a point on which I should decide for myself.

Accordingly, for the first time during my lengthened period of military command, I devolved the responsibility of a decision on the officers appointed under the Crown to advise me in matters of discipline and law.

For reasons which are officially set out in the Memorandum of the Committee composed of the Adjutant General, the Deputy Adjutant General, and the Officiating Judge Advocate General of the Army, it was determined to submit the case to a military court, *vide* paragraph 2 of the Memorandum of the Committee, dated 4th June 1866.

The same Committee determined that Mr. Jervis should not be prosecuted for felony under the 100th section of the Mutiny Act, but that he ought to be arraigned for trial on a charge of scandalous conduct, which would not bar charges on account of the military crime of disobedience, *vide* paragraph 3 of the Memorandum. Contrary to my own personal wish I acceded to this decision, while I placed on official record that it would lay me open to the misconstruction of being a judge in my own cause.

There were, however, strong reasons for countenancing the decision of the Committee, which occurred to me, in addition to those it stated, the great weight of the reasons of the Committee being incontestable.

These reasons are as follows:—According to the Mutiny Act, officers and soldiers against whom crimes of felony are alleged in India are tried by military court martial if the crime has been committed at a distance of more than 120 miles from the Presidency towns.

The discovery of the misappropriation alleged against Mr. Jervis took place at a distance of 1,100 miles from Calcutta.

It is true that, exceptionally, crimes may be transferred for trial by the Criminal Court in Calcutta, notwithstanding the 100th Section of the Mutiny Act. But such a course is of the rarest occurrence.

On a recent occasion, viz., in the case of Captain , and Commissary of Ordnance, who was charged with misappropriation of Government stores, this exceptional course was followed at my instance, and with the consent of the Government, because of the very difficult character of the evidence, which rendered it necessary, in my opinion, that the case should be investigated by a learned tribunal. I do not know of any other case which has thus been transferred. When the order was given for the transfer of that case to the magistrate from the military authorities, it was objected to by Captain , who has always maintained, notwithstanding his acquittal by a special jury, that an injustice was practised towards him by the removal of his case from the cognizance of a court martial.

In the matter of Mr. Jervis, on the contrary, as regarded the nature of the evidence, there was, as I was advised, no difficulty while the *primâ facie* case, explanation being resolutely denied by the prisoner, was very clearly established.

It has been noticed that Simla is 1,100 miles from Calcutta.

If a criminal prosecution had been resorted to in the High Court of that city, the only civil tribunal before which it could have been tried, the business of the

head quarters of the large army under my command must have been intermitted for a lengthened period, owing to my necessary absence at Calcutta, or I must have taken the head quarters with me.

But further, the Commander in Chief is a member of the Government of the Governor General, which was then at Simla. He has, in my person, received the positive instructions of the Secretary of State for India and of his Royal Highness the Field Marshal Commanding in Chief, not to absent himself from his place in the Government more than is absolutely necessary for executive army purposes.

During the last year and a half, I have consistently acted up to those instructions, and by the exertion of great personal activity and not inconsiderable labour, I have managed to unite the two functions, viz., of attendance in my seat of Government, and of the executive duties of military inspection and command. With a few exceptions, this has not been the practice of my predecessors in command, so far as I am aware.

It may now be asked, considering the recorded opinions of my constituted advisers, and the personal nature of the entanglement caused by Mr. Jervis's conduct, whether I should have been justified in causing a great delay in business, and in disregarding my instructions, for the purpose of escaping the misconstruction and odium which I knew would attend the performance of my duty in the matter concerned,

That this was foreseen by me is shown by the last sentence of the 3rd paragraph of my memorandum, dated 4th June 1866, the same being No. 5 of the printed papers.

I venture to think, that it must appear that, whatever the painful results to myself, I acted on this occasion with a proper regard to a sense of duty, which is demanded from one in my position.

I would now invite attention to the further consideration of the error by which the public mind has been misled, viz. that a general officer who orders a court martial on a case in which he is concerned and is an evidence, is a judge in his own cause.

It is not necessary to travel beyond Mr. Jervis's trial to show the fallacy herein contained, the prisoner having been acquitted on the scandalous charge, notwithstanding the evidence of the officer who ordered the court martial, and whose property had been misappropriated.

But in truth it is an absolute confusion of ideas to attribute the character of judge to a general officer in such a position.

He cannot change a verdict; he cannot commute a sentence, except in the case of certain crimes, as defined in the Mutiny Act, although he can point out to the court martial errors in its finding and sentence.

His action is simply that of an executive officer and not of a judge.

Thus, as a matter of expediency, it is in his power to mitigate a sentence, and if a finding of guilty be contrary to proof, he can in his executive capacity annul the court martial. But if a verdict of not guilty be contrary to proof, and if the court martial decline to admit his reasoning on revision, such a general officer has simply no power in the matter.

In like manner, the admission or rejection on his part of a recommendation to mercy, is merely an executive act, grounded on what, in his opinion, may be a right expediency with respect to the interests of Her Majesty's Service and the personal deserts of an individual officer who has incurred a penal sentence.

It must, therefore, be said that a general officer in command, who relegates a case in which he is concerned to the decision of a court martial, places the accused and himself on a footing of equality, with a view to the furtherance of the interests of justice.

This brings me to a third consideration. It has been said, over and over again, that I have acted hastily; that I had pre-conceived the prisoner's guilt; that I would not allow him to answer or to plead facts in extenuation or explanation.

What are the facts? When Mr. Jervis was first accused of misconduct involving allegations of gross duplicity on his part, it was proposed to him to confront his accuser and the evidence before a confidential court composed of his two brother officers and comrades on the staff.

He persistently evaded this inquiry, and by his conduct led me to believe that he admitted the justice of his removal from the staff.

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When, however, I discovered that he disputed the justice of my personal award, I determined to have the matter officially inquired into, for my own satisfaction as well as his, that it might not be possible to be said hereafter, that any officer could be punished by me without due inquiry.

If the result of the investigation had been against my previous decision, there could have been but one consequence, viz., that Mr. Jervis must have re-entered my family if he liked.

I cannot say that I thought that this would follow, so complete did the evidence seem ; but it is obvious that Mr. Jervis would take no means of clearing himself in the manner offered him.

It is, however, but fair to me to show how anxious I was, at the commencement of all this disturbance, that there should be no action on my part until it had received the sanction of unbiassed inquiry.

When a crime of swindling was alleged against Mr. Jervis, I having been the person who was swindled, the same anxious course was followed, he having had the opportunity of two confidential courts to clear himself, viz., the Court of Inquiry and the Committee of Audit.

My patience was even then not exhausted. It is seen that on the 12th June 1866, the Adjutant General again appealed to Mr. Jervis to attend the Court of Inquiry to hear fresh evidence which was alleged against him.

It is thus evident that the superior officer, who has been so freely accused before the public of hastiness and oppression, made no less than five distinct efforts to induce Mr. Jervis to clear himself of the allegations to his disadvantage before the final order was given by which such charges were conveyed to him.

It must be admitted that courts martial in India often place themselves in a false position by their recommendations to mercy, as well as the general officers who are obliged to reject such appeals to clemency. This has been frequently remarked on by successive Commanders in Chief.

Thus, for the majority of offences, a wide margin of sentence is left by the law to the discretion of a general court martial. It often happens that such a court awards the severest sentence permissible by law, and then tacks on a recommendation to mercy. It is evident that if a general court martial would avoid self-stultification, it should, in the exercise of its discretion, award the sentence which it really considers merited. It is logically correct to say that a recommendation to mercy should find no place in the proceedings of a court martial, except in the case of certain crimes for which the punishment, viz., cashiering, is absolutely prescribed by law. Thus, in the case of Mr. Jervis, if the court thought him worthy of mercy, it was its duty not to have sentenced him to dismissal from the service, but to such a minor punishment as it really thought commensurate with the offences of which it found him guilty. The range of sentence open to the court extended from one of death to one of simple reprimand.

Such are the salient points which appear to me to be worthy of notice from myself, in answer to the prolonged hostile criticism to which I have for many months submitted in silence. If, however, more be required, I would ask that careful attention may be given to the detailed analysis, which, at my request, the Judge Advocate General of this army has been so good as to undertake of the papers connected with the court martial, and the matters which preceded the sitting of the court.

The more all these documents are sifted and examined, the more obvious will, I think, it become, that with respect to the most solemn obligation of duty, according to the trust reposed in me as Commander in Chief in India, the adoption of the recommendation to mercy in favour of Mr. Jervis was simply an impossibility.

(signed) *W. R. Mansfield.*

Camp, Agra, 17 November 1866.

CORRESPONDENCE between the Secretary of State for War and the Secretary of State for India relative to the proposed GRANT to Captain *Jervis*, of the Price of his Commission.

Captain *Jervis* to the Military Secretary, Horse Guards.

Grosvenor Hotel, S.W.,
6 May 1867.

Sir,

I HAVE the honour to inform you, that I have now been for two months in England, and am exceedingly anxious to ascertain whether any decision has been yet passed in the matter of my late trial by court martial.

I should be much obliged if, with the permission of his Royal Highness the Duke of Cambridge, you could give me any information on the subject, that I may, if possible, be relieved from the present anxious suspense, and be enabled to shape my course for the future.

I have, &c.
(signed) *Scott Jervis*,
Captain 106th Light Infantry.

Lieutenant General W. F. Forster, K.H.,
Military Secretary, Horse Guards, S.W.

The Under Secretary of State for War to the Under Secretary of State for India.

War Office, 13 May 1867.

Sir,

I AM directed by Secretary Sir John Pakington, to transmit to you for the consideration of the Secretary of State for India in Council, the accompanying copy of a letter which has been received by the Military Secretary to the Field Marshal Commanding in Chief from Captain S. Jervis, 106th Regiment.

Sir John Pakington having been in communication with his Royal Highness on the subject of this application, has arrived at the conclusion, that with a view to meet the case of Captain Jervis, it is desirable to make such arrangements in mitigation of the sentence on that officer, and in deference to the recommendation to mercy by the court martial, as may be equivalent to permitting him to sell his commission as if he were an officer in one of the purchase regiments in the British Army.

His Royal Highness has expressed his concurrence in this proposition, and I am to request that should Sir Stafford Northcote see no reason to dissent from it, you will move him to cause the necessary arrangements to be made accordingly.

I am, &c.
(signed) *E. Lugard.*

The Under Secretary of State
for India.

Major General *T. T. Pears* to the Under Secretary of State for War.

India Office, 24 May 1867.

Sir,

I AM directed by the Secretary of State for India in Council, to acknowledge the receipt of your letter of the 13th instant, forwarding a letter from Captain Jervis of the 106th Regiment, and stating that Sir John Pakington having been in communication with his Royal Highness the Commander in Chief, on the subject of that officer's application, has arrived at the conclusion that with a view to meet his case, it is desirable to make such arrangements in mitigation of his sentence, and in deference to the recommendation to mercy by the court martial, as may be equivalent to permitting him to sell his commission, as if he were an officer in one of the purchase regiments in the British army, and requesting

ing that in the event of Sir Stafford Northcote concurring in this view, he will cause the necessary arrangements to be made accordingly.

2. In reply, I am desired to state, that as far as Sir Stafford Northcote has been made acquainted with the present position of Captain Jervis, that officer has been sentenced by court martial in India to be dismissed the service, but with a recommendation to mercy, and that the sentence has been confirmed by the Commander in Chief in India, but that effect has not yet been given to the sentence in this country, either by its publication in the "Gazette," or by the removal of Captain Jervis's name from the regiment in the Official Army List.

3. Captain Jervis, although he retained, on transfer to the 106th Foot, a prospective claim to pension under India rules, is not yet entitled under those rules to any pension, having entered the army as recently as 1856, but I am desired to state, that should the sentence of the court martial be carried out, and this officer be removed from the service, the Secretary of State in Council will be prepared, on the recommendation of his Royal Highness the Commander in Chief, and the Secretary of State for War, to grant him from Indian Revenues a sum equivalent to the selling value of his commission.

I have, &c.
(signed) *T. T. Pears*, Major General,
Military Secretary.

The Under Secretary of State
for War.

The Under Secretary of State for War to the Under Secretary of State for India.

Sir, War Office, 7 June 1867.

With reference to your letter of the 24th ult., relative to the case of Captain Jervis, 106th Regiment, I am directed by Secretary Sir John Pakington to transmit to you, for the consideration of the Secretary of State for India in Council, the accompanying copy of a letter from the Military Secretary to the Field Marshal Commander in Chief.

Sir John Pakington, with the concurrence of Sir Stafford Northcote, proposes to agree to the recommendation of his Royal Highness.

I am, &c.
The Under Secretary of State for India. (signed) *E. Lugard.*

(Enclosure.)

"Sir, "Horse Guards, 5 June 1867.

"With reference to your letter of the 29th ultimo, and to previous correspondence on the case of Captain Jervis, 106th Regiment, I am directed by the Field Marshal Commanding in Chief to acquaint you, for the information of the Secretary of State, that his Royal Highness proposes to give effect to the sentence of dismissal passed on that officer by the general court martial which sat on his trial at Simla last year.

"But with reference to the recommendation of the Court in Captain Jervis's favour, and to the peculiar circumstances of the case, his Royal Highness desires me to suggest that a sum equivalent to the full value of his commission, viz. 1,800 *l.*, may be granted him.

"On receiving your reply to this communication, measures will be immediately taken for succeeding Captain Jervis in the 106th Regiment.

"I have, &c.
"The Under Secretary of State, (signed) "*W. F. Forster.*"
"&c. &c. &c.
"War Office."

Major General *T. T. Pears* to the Under Secretary of State for War.

Sir, India Office, S.W., 8 June 1867.

1. I AM directed by the Secretary of State for India in Council to acknowledge the receipt of your letter of the 7th June, enclosing, with reference to a letter from this Office dated the 24th May (No. 306 W. 1835), copy of a letter from the Horse Guards, in which his Royal Highness the Field Marshal Commanding in Chief suggests that a sum equivalent to the value of his commission, viz., 1,800 *l.*, should be granted to Captain Jervis, H.M.'s 106th Regt., and stating that Sir John Pakington, with the concurrence of Sir Stafford Northcote, proposes to agree to the proposal of his Royal Highness.

2. In reply, I am directed to acquaint you that Sir Stafford Northcote concurs in the course proposed, and I am to request that Captain Jervis may be informed that the sum of 1,800 *l.* will be paid to him on application at this Office.

I am, &c.
(signed) *T. T. Pears*, Major General,
Military Secretary.

The Under Secretary of State
for War.

SIMLA COURT MARTIAL.

COPIES of a DESPATCH of 17th January 1867, from the Field Marshal Commanding in Chief to the Commander in Chief in *India*, relative to the SIMLA COURT MARTIAL, with the Answer thereto; and, of CORRESPONDENCE between the Secretary of State for War and the Secretary of State for *India*, relative to the proposed GRANT to Captain *Jervis* of the Price of his Commission.

(*Mr. Brett.*)

Ordered, by The House of Commons, *to be Printed*, 22 *July* 1867.

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